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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 158

FLEMING SMITH, PETITIONER

vs.

ILLINOIS

**ON WRIT OF CERTIORARI TO THE APPELLATE COURT
OF ILLINOIS, FIRST DISTRICT**

**PETITION FOR CERTIORARI FILED NOVEMBER 1, 1957
CERTIORARI GRANTED MAY 13, 1958**

Supreme Court of the United States

OCTOBER TERM, 1967

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OF ILLINOIS, FIRST DISTRICT

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Original Print

Record from the Circuit Court of Cook County, Illinois, County Department, Criminal Division

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[fol. A]

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS

Gen. No. 64-2447

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

FLEMING SMITH

INDICTMENT FOR UNLAWFUL SALE OF NARCOTIC DRUG
Filed August 10, 1964

[fol. B]

UNITED STATES OF AMERICA

STATE OF ILLINOIS,)
) SS.
 COOK COUNTY,)

Pleas, before a branch of the Circuit Court of Cook County, in said County and State, begun and held at the Circuit Court, in the City of Chicago, in said County, one thousand nine hundred and sixty four and of the Independence of the United States the one hundred and eighty ninth.

Present: HONORABLE JOHN S. BOYLE, Judge of the Circuit Court of Cook County.

DANIEL P. WARD, State's Attorney.

RICHARD B. OGILVIE, Sheriff of Cook County.

Attest: JOSEPH J. McDONOUGH, Clerk.

And afterwards, to wit: on August third in the year last aforesaid, the Sheriff of Cook County returned into Court the Venire Facias heretofore issued for the Grand Jury and returnable to-day, by which it appears that the following named persons have been duly summoned to appear this day and serve as Grand Jurors of this Court:

Ernest K. Willett
Sam Calabrese
Dorothy H. Hanau
Louis Mastronardi
Kathryn V. Crokin
John M. Smith
Howard L. Hannon
Lincoln Pettibone
Gertrude A. Ehlscheid
Lauretta M. Bombe
Betty Goode

Ruth E. Grossman
Paul F. Mossey Jr.
A. Jerome Wysch
Ann Thomas
Sophie Fox
Martin S. Seehuus
James P. Grogan
Clarence J. Stermer
Ruth Jones
Vivian McCormick
Emma Gutsch

Donald Radke

who answered to their respective names.

The panel of Grand Jurors being now filled, the Court having now here appointed Ernest K. Willett foreman of said Grand Jury, the Grand Jurors aforesaid were duly sworn and charged by the Court, and thereupon retired to consider their presentments.

[fol. C] And afterwards, to-wit: on August tenth in the year last aforesaid, it being the term of Court, there being present Honorable ALEXANDER J. NAPOLI, Judge of the Circuit Court of Cook County, Illinois.

DANIEL P. WARD, State's Attorney,
RICHARD B. OGILVIE, Sheriff, and
JOSEPH J. McDONOUGH, Clerk

The following among other proceedings were had and entered of records in said Court, which said Proceedings are in words and figures following to-wit:

The GRAND JURORS returned into open Court and made a Presentment endorsed "A TRUE BILL" in the following entitled cause, to-wit:

Gen. No. 64.2447

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

FLEMING SMITH

INDICTMENT FOR UNLAWFUL SALE OF NARCOTIC DRUG

BAIL: \$5,000.00

[fol.D]

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The August, 1964 Grand Jury
of the Circuit Court of Cook County.

The Grand Jurors chosen, selected, and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on February 28th, 1964 at and within said County Fleming Smith committed the offense of sale of a narcotic drug in that knowingly sold to James Jordan for lawful money of the United States of America, otherwise than as authorized in the Uniform Narcotic Drug Act of said State of Illinois then in force and effect, a quantity, (the exact quantity of which is unknown to said Grand Jurors), of a certain narcotic drug, to wit: heroin, in violation of Chapter 38, Section 22-3 of the Illinois Revised Statutes 1963, contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

DANIEL P. WARD
State's Attorney

4
[fol. E]

ENDORSED

G. J. No. 32

General No. 64-2447

CIRCUIT COURT OF COOK COUNTY

COUNTY DEPARTMENT—CRIMINAL DIVISION

August 1964

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

FLEMING SMITH

INDICTMENT FOR UNLAWFUL SALE OF NARCOTIC DRUG

A TRUE BILL

Ernest K. Willett, Foreman of the Grand Jury

Witnesses: William Flonor, Thomas Strom

Filed, Aug. 10, 1964, JOSEPH J. McDONOUGH, Clerk.

Bail, \$5,000.00

* * * *

[fol. 1]

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT—CRIMINAL DIVISION

Indictment No. 64-2447

Charge: Unlawful sale of a narcotic drug.

Filed, Dec. 1, 1964, JOSEPH J. McDONOUGH,
Clerk of the Circuit Court, Criminal Division

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

FLEMING SMITH

TRANSCRIPT OF PROCEEDINGS—September 21, 1964

BE IT REMEMBERED that on the 21st day of September, A.D., 1964, this cause came on for trial before the Honorable HERBERT R. FRIEDLUND, Judge of said Court, upon the indictment herein, the defendant having entered a plea of not guilty.

APPEARANCES:

HON. DANIEL P. WARD, State's Attorney of Cook County, by

MR. PATRICK TUITE and

MR. ROBERT MARTWICK, Assistant State's Attorneys,
on behalf of the People;

MR. WALTER LAVON PRIDE, on behalf of the Defendant.

[fol. 3]

JAMES JORDAN,

called as a witness on behalf of the State of Illinois, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Martwick:

Q Would you state your name?

A James Jordan.

Q Spell your last name for the record.

A J-o-r-d-a-n.

Q Mr. Jordan, calling your attention to the 28th day [fol. 4] of February, 1964, at approximately 9:30 in the evening, did you have occasion to go to the 2nd District station located at 48th and Wabash?

A I did.

Q And upon your arrival there, sir, who did you see if anyone?

A I saw Officer Strom and Officer House.

Q And did you have a conversation with Officer Strom and House at that time?

A Yes, I did.

Q And after your conversation what did you do?

A We got into a car and rode to 43rd and the "L" and I pointed out Fleming Smith, that I had been purchasing heroin from.

MR. PRIDE: Objection.

MR. MARTWICK: You saw Fleming Smith there, is that right?

A Right.

Q This person you refer to as Fleming Smith, do you see him in the Courtroom today?

A Yes, I do.

Q Would you point him out?

A Right there.

Q Which man?

A The second man.

[fol. 5] Q For the record, indicating the defendant.

Now, after you saw Fleming Smith there, the defendant, what happened after that?

A I was drove back to the station and I had told Officer Strom and Officer House that I could make a purchase from him.

MR. PRIDE: Objection.

MR. MARTWICK: You had a conversation, right?

A Right.

Q All right. Now, after this conversation what did Officer Strom and Officer House do, if anything, and what did you do, if anything?

A I was taken to the station and my clothes was taken off, I was searched to see if I had anything on me—

MR. PRIDE: Objection.

THE COURT: Yes, strike it.

MR. MARTWICK: Q You were searched. All your clothes were taken off?

A Yes.

Q And did you see what the officers did to your clothes?

A Yes, I did.

Q What did they do to your clothes?

[fol. 6] A They looked through everything that I had on.

Q All right, sir. After the—did you dress after that?

A Yes, I did.

Q And did you have anything at all, right after you put your clothes on, did you have anything in your pockets?

A Nothing but my wallet.

Q And what happened after that?

A After that I was given \$7, six one dollar bills and a dollar's worth of change.

Q And what if anything did you do with this money, sir?

A They taken the numbers off of the bills and off of the currency and then the three of us signed it and I checked it to see if it was the same as was on the paper.

Q And were the numbers on the bills and the numbers on the paper the same, sir?

A Yes, sir.

MR. MARTWICK: I ask that this be marked People's Exhibit No. 1, for identification.

(Document so marked.)

MR. MARTWICK: People's group Exhibit No. 1. Let [fol. 7] the record indicate I am now taking apart what has now been marked as People's Group Exhibit No. 1, for identification, two brown manila envelopes and I'm opening one of the brown manila envelopes which is sealed and which has \$4 U.S. currency and Mayday, L written across the back of it, which is written and covered with Scotch tape, and, from within I'm removing the contents which consists of four one dollar bills and a sheet of paper with writing on it.

I'll show you part of People's Group Exhibit No. 1, for identification, and ask you to look at that.

Do you know whose signature appears on the last line here, sir?

A That is mine.

Q And I'll show you another part of People's Group Exhibit No. 1, for identification, four one dollar bills and I'll ask you to look at those four one dollar bills in relation to this sheet of paper.

Have you checked them, sir?

A Yes.

Q Are these the bills you looked at and the piece of paper you signed on that night, sir?

A Yes, sir.

[fol. 8] **Q** Now, after you were given this money, sir, what happened then?

A Officer Strom and Officer House drove me to 43rd, between 44th—between 43rd and 44th on Prairie, we parked, I got out of the car, Officer House got out with me and we walked up to the restaurant at 317, right up under the "L". Officer House stood outside of the restaurant, Officer Strom was across the street, diagonally across, and I went in and I saw—

MR. PRIDE: Objection.

THE COURT: Strike it. Don't tell what you saw.

MR. MARTWICK: Pardon me, Judge?

MR. PRIDE: He is testifying, I am objecting to him testifying to what the officer saw.

THE COURT: The answer should be responsive to your question.

MR. MARTWICK: You saw Officer Strom across the street and Officer House was in front of the restaurant with you, what did you do at that time?

A I went in the restaurant.

Q And when you went into the restaurant, did you have occasion to see anyone?

[fol. 9] A I saw Fleming Smith.

Q The same Fleming Smith you pointed out previously?

A Yes, sir.

Q What if anything did you do after you saw the defendant Fleming Smith?

A I told him I would like to buy a half of sixteenth from him, he told me that he didn't have no half. He said he only had a \$5 bag. So I asked him if I could have one for 4.75 and he said, "Yes." So, I gave him \$4 and three quarters and he looked in the fly of his pants and he gave me a bag and I taken it from him and walked out and I taken my handkerchief out of my pocket and wiped my face to let officer House know that I had made the buy.

MR. PRIDE: : Objection.

THE COURT: Strike that last part.

MR. MARTWICK: Q Now, after you got the bag of—the tinfoil package, did you give anything to Mr. Smith?

A After I got—I gave him the money first.

Q You gave him the money first?

A Yes.

[fol. 10] Q And then he gave you the bag?

A He gave me the bag.

Q After he gave you the bag what did you do, did you walk out of the restaurant?

A I walked out.

MR. PRIDE: Object; he has already testified to that, he said he walked out and wiped his face.

THE COURT: Yes, he said he walked out.

MR. MARTWICK: Q Now, when you got outside, sir, where did you go if anywhere?

A I walked west on 43rd Street towards the car. Officer Strom was following me. I got to the car and gave him the bag.

MR. PRIDE: Objection, ask it be stricken.

THE COURT: Strike the portion about Officer Strom following him.

MR. MARTWICK: Q Did you see Officer Strom following you?

A Yes, sir.

MR. MARTWICK: May it stand, Judge?

Did you get to the car?

A Yes, we walked to the car.

MR. PRIDE: Object to the leading form of these questions, he is quite capable of testifying for himself.

[fol. 11] MR. MARTWICK: I was just trying to bring him back to where he was.

MR. PRIDE: We are not in a hurry.

THE COURT: Ask him where he walked to, don't tell him where he walked to.

MR. MARTWICK: Q All right. Where did you walk to after you left the restaurant?

A I walked back to the car.

Q When you got back to the car did you see anyone there?

A Officer Strom.

Q Did you have a—what did you do when you saw Officer Strom?

A I saw him at the car and I gave him the bag that I had purchased from Smith.

Q And would you describe this bag that you are speaking of, sir?

A It was a small package of tinfoil.

Q And after you gave Officer Strom this bag, sir, what did you do then?

A I gave him the bag and \$2.25 worth of change and then he told me to leave, that he would see me later.

Q Did you leave at that time?

[fol. 12] A I did.

Q Mr. Jordan, are you a user of narcotics, sir?

A Yes, I am.

Q How much do you use, sir?

A Oh, I chip, I don't know, maybe a bag or two a day.

MR. PRIDE: Objection.

THE COURT: What word did he use?

MR. MARTWICK: Chipped, C-h-i-p-p-e-d.

MR. PRIDE: Objection.

THE COURT: Strike that word.

MR. MARTWICK: Q How much do you use, sir?

A Maybe a bag a day, maybe. Sometimes it is every other day if I get one.

Q Prior to today, sir, when is the last time that you used any heroin?

A Friday.

Q That is Friday, September 19th, sir?

A Right.

Q So that is two days ago, is that right?

A Right.

Q How long have you been working for the Chicago Police Department, sir?

MR. PRIDE: Objection, no foundation for this question.

[fol. 13] THE COURT: Objection sustained.

MR. MARTWICK: Are you working for the Chicago Police Department, sir?

A Yes.

Q How long have you been working for them in your present capacity?

MR. PRIDE: Objection, there is no showing he is in any present capacity.

THE COURT: All right.

MR. PRIDE: I'm going to object to the officer giving signals to the State's Attorney. Now, don't tell me you didn't do it, you nodded the head.

THE COURT: The reference to his capacity may be stricken.

MR. MARTWICK: I object to counsel—everytime we have a trial here he accuses me or the witness of giving signals or the officer giving signals, everytime we try a case here he says that.

MR. PRIDE: I saw him doing that.

MR. MARTWICK: Don't do that, Walter.

MR. PRIDE: Don't refer to me as Walter during a trial, my name is Mr. Pride.

MR. MARTWICK: Well, don't be making false accusations.

MR. PRIDE: Don't you ever refer to me as Walter [fol. 14] in the trial of a case.

MR. MARTWICK: I'll ask for a ruling on counsel's objection to the officer giving me signals whom I didn't even look at.

THE COURT: I want you both to stop the bickering.

MR. PRIDE: And I want him to be instructed not to ever call me by my first name in any trial in Cook County, I refer to him as Mr. Martwick and I want the same respect. You can laugh if you want to, but there is nothing funny.

MR. MARTWICK: Judge, let the record indicate I'm not laughing.

MR. PRIDE: Well, maybe you just look that way.

THE COURT: Proceed.

MR. MARTWICK: Q Prior to February 28, 1964, had you ever done the same thing that you did for the police on that night, sir?

MR. PRIDE: Objection.

THE COURT: I think it is proper.

A Yes, I have, sir.

MR. MARTWICK: Q And since then have you done anything like this as you have—

MR. PRIDE: I object to if he has done anything like this, if he is trying to show this man is a paid police [fol. 15] informer he should lay the proper foundation, he is either a paid informer or not.

THE COURT: Lay the foundation.

MR. MARTWICK: Did you receive any compensation for your work on February 28, 1964, sir?

A Yes, sir.

Q Fine. All you have testified about, Mr. Jordan, happened her in Chicago, Cook County, Illinois?

A Yes, sir.

MR. MARTWICK: Thank you.

CROSS EXAMINATION

By Mr. Pride:

Q When did you first meet Officer Strom?

A Oh, I met him around June of last year.

Q What year would that be?

A '63.

Q Have you ever made any cases for him before?

A Yes, sir.

Q How many?

A Two I know of.

Q And did you testify in those cases?

A No, I didn't.

Q Have you ever testified in a narcotic case before?

A Yes, I have.

Q And when was that, sir?

[fol. 16] A It would have to be in March or April of this year.

Q And do you remember the name of that case?

A Sylvester Bailey and Juanita Cohen.

Q Were you asked at that time whether or not you used narcotics?

A Yes.

Q And was your answer yes or no?

A Yes.

Q And were you asked how often you used narcotics?

A Yes.

Q And did you say that you were using one pack a day at that time?

A Yes, I did.

Q Now, how long have you been using narcotics?

A About, off and on for about four years.

Q What do you mean off and on?

A Because I have used it and I went off for a year to Vandalia.

Q What do you mean went off for a year?

A I went to Vandalia for a year.

Q Was that because you were convicted of a crime?

A Was that because I was convicted of a crime?

Q Yes.

A That's true.

[fol. 17] Q Of what crime were you convicted?

A Larceny.

Q And what year was that?

A That was 1960.

Q Do you remember when you went there?

A It was around April of that year, sir.

Q And do you remember when you got out?

A December, I think, of the next year.

Q And what was the next charge for which you were convicted?

A I wasn't, that was the last one.

Q And when were you last convicted before April, 1960?

A 1953.

Q What was that for?

A That was for robbery.

Q And how long did you stay in Stateville on the conviction for robbery?

A Fifty-seven months.

Q Now, what was the actual period of your sentence?

A Two to seven years.

Q And when did you get out?

A 1958, February, '58.

Q Now, did you use narcotics between 1958 and 1960?
[fol. 18] A No, I didn't.

Q What kind of narcotics do you use?

A Heroin.

Q And how much did you use when you first acquired the habit?

A At the time I acquired the habit they were selling—

Q No, I asked you how much did you use.

A I couldn't say because they was in pills then, they wasn't like they are now. It was a smaller amount I know.

Q Smaller than one bag?

A Yes, it was.

Q Your habit has increased since you first started using it, isn't that correct?

A At times it have.

Q And did you ever go to Lexington to take the cure?

A No, I didn't.

Q Have you ever gone to a private physician to take the cure?

A No.

Q Have you ever taken a narcotics cure at any place?
[fol. 19] A Yes, myself, at home.

Q What is your method of treatment for narcotics addiction?

A Nothing, I just stayed in the house for four days until it was over with.

Q And is this the only time that you have stayed off of narcotics during the past four years?

A Is this the only time?

Q Yes, when you stayed in the house for four days.

A Well, I was off, naturally, when I went to do a year in Vandalia.

Q Well, you said you didn't use narcotics during 1958 and 1960?

A I went to Vandalia in 1960.

Q Well, you said you were off while you went to Vandalia.

A Right.

Q Now, did you use narcotics before you went to Vandalia?

A No, I didn't.

Q Well, then you didn't have to get off of narcotics if you had never used any?

A I didn't say that.

Q You said, naturally I was off during the time that [fol. 20] I was at Vandalia.

A I said for the last four years that I have used narcotics, that is, from '64 to 1960.

Q Didn't you say that naturally I was off during the time that I was at Vandalia?

A Well, sure, I said that.

Q But you said you had never used narcotics before you went there.

Now, had you used narcotics before you went to Vandalia?

A Yes, that was in '60 when I was using it.

Q So you used narcotics before you went to Vandalia?

A That is true.

Q Now, do you use any other names?

A Do I use any other names?

Q Yes. If I'm not speaking clearly ask me and I'll attempt to speak more clearly.

Do you use any other names?

MR. MARTWICK: I'll object to that.

MR. PRIDE: Q Do you use any other names except James Jordan?

MR. MARTWICK: Judge, I'm objecting to the question.

THE COURT: What was the question?

MR. PRIDE: I asked him if he used any other names [fol. 21] besides James Jordan.

THE COURT: He may answer.

MR. MARTWICK: Judge, in the People vs. Durr, I don't believe he has to reveal these names for his own safety.

MR. PRIDE: Well, he is here himself.

THE COURT: Well, as far as protection, I can see where it is for his protection that he wouldn't use names because he might be involved in other cases as an informer so I won't let him answer.

MR. PRIDE: Is James Jordan your correct name?

MR. MARTWICK: Object.

MR. PRIDE: I have a right to know if it is his correct name.

THE COURT: He may answer if it is his correct name or not.

MR. PRIDE: Q Is that your correct name?

A No, it is not.

Q What is your correct name?

MR. MARTWICK: Object.

THE COURT: I won't have him answer that.

MR. PRIDE: Q Are you known in the streets as "Salt pork?"

MR. MARTWICK: Object.

[fol. 22] THE COURT: I won't have him answer that.

MR. PRIDE: Did you participate in any other sales of narcotics for the police department on the same date as this sale?

A No, I didn't.

Q Are you aware of the fact that you are under oath?

A On the same day as this sale?

Q Yes.

A I don't remember.

Q Did you participate in any controlled sales of narcotics during the month of March, 1964?

A February, March, yes, I did.

Q And were you using narcotics at that time?

A The same as I have stated.

Q Were you using narcotics at that time?

A Yes, I was.

Q And were you working—strike that.

How long have you been an informer for the police department?

MR. MARTWICK: Objection, Judge, it has been asked and answered, it is repetitious.

THE COURT: Yes.

MR. PRIDE: Q Have you worked for any other officers besides Officers House and Strom?

A I have.

[fol. 23] Q Have you ever worked for Officer Thomas King?

A I have.

Q And Officer Kelly?

A I have.

Q Officer Phil Williams?

A I have.

Q Now, I will redirect your attention to the 28th day of February, 1964, and ask you if you made any other controlled purchases of narcotics on that same date?

MR. MARTWICK: Objection, Judge, he said he doesn't remember.

THE COURT: Well, if he remembers now. If he doesn't remember—

MR. PRIDE: Q Do you remember now?

A It's hard for me to remember.

THE COURT: Do you remember?

A If I made another sale?

THE COURT: I say, if you remember another purchase on that day.

A No, I don't remember.

MR. PRIDE: Q Do you remember any other things that happened on that day except the events which you have testified to in court today?

[fol. 24] MR. MARTWICK: Object to the form of the question.

THE COURT: He may answer. Do you understand the question?

A No, I don't.

THE COURT: He wants to know if you remember anything else that happened on that same day that you made that sale in this case or purchase in this case?

A No, I don't.

THE COURT: Anything else, not just pertaining to this purchase, he means anything else, he says do you remember anything else that happened that day, where you were, who you met or anything that happened. For instance, do you know what time you got up and where you had breakfast and what you did and who you saw, if anybody, or you walked down certain streets, and so on.

A I went back to 47th Street.

MR. PRIDE: Q What time did you get up on February 28, 1964?

A What time did I get up?

Q Yes.

A Around 7:30.

[fol. 25] Q That is a.m.?

A Right.

Q What did you do after that?

A Came out, went to the poolroom.

Q By the way, were you employed at that time?

A In February?

Q Yes.

A Yes, I was.

Q Where were you working then?

A For the police.

Q And any police in particular?

A What does he mean?

Q Were you working for any particular police officers or were you employed by the Chicago Police Department?

A I was working for police in particular.

Q And which ones would that be?

A Officer Knazze, Martin—

THE COURT: Officer who?

A Officer Knazze, Officer Martin.

THE COURT: What is that name?

MR. MARTWICK: Knazze.

MR. PRIDE: Q Is that the officer known as "Buckskin?"

A That's true.

[fol. 26] Q Who else?

A Officer Martin.

Q Cornelius Martin?

A That is true.

Q Anyone else?

A Officer Crigler.

Q Weyman Crigler?

A Right.

Q Officer Thomas King?

A Right.

Q Officer James Kelly?

A Right.

Q Officer Phil Williams?

A Right.

Q Now, did you receive any money from Officers King, Kelly and Williams on February 28, 1964?

A I don't remember.

Q Well, these were your employers, weren't they?

A That is true.

Q Did you receive any money from Officer Strom and House on February 28, 1964?

A I did.

Q What did you receive from them?

A \$10.

[fol. 27] Q And what was that for, if anything?

A For my work.

Q And you mean by that, selling some narcotics to the defendant Fleming Smith?

MR. MARTWICK: Objection.

MR. PRIDE: Q Is that what your work consisted of on that day?

THE COURT: Did you hear the question?

A No, I didn't.

THE COURT: All right. Restate it.

MR. PRIDE: Q Did you receive the \$10 for selling narcotics to Fleming Smith?

MR. MARTWICK: Objection.

A I didn't sell any.

THE COURT: He said he didn't sell any.

MR. PRIDE: Q Did you receive \$10 for buying narcotics from Fleming Smith on that day?

A Did I receive \$10 for buying narcotics?

Q Yes, you bought narcotics from Fleming Smith on February 28, 1964?

A Right.

Q Is that what you received the \$10 for?

A I got \$10 for my work.

Q And what did your work consist of on that day?
[fol. 28] A To make a controlled buy.

Q So then, in other words, the \$10 which officer Strom and House gave you was for being able to buy narcotics from Fleming Smith, right?

A The money that they gave me?

Q Yes, the \$10.

A No, I didn't receive that to buy narcotics.

Q What did they give you the \$10 for?

A For my personal use.

Q For performing what job, what work?

MR. MARTWICK: Judge, I think the question has been answered.

THE COURT: He has answered to make a controlled buy.

MR. PRIDE: Q That is from Fleming Smith, right?

A Right.

Q Have you ever received any other moneys from Officer Strom and Officer House?

A No, I haven't.

Q This was the first time?

A I'm not sure, your Honor.

Q Well, now, you said that you were employed by the police, right?

A Right.

Q How often did you receive money from the police
[fol. 29] officers who employed you?

A Oh, once or twice a week.

THE COURT: I think we'll take a little recess. I'll be back in a second.

MR. PRIDE: All right, Judge.

(Short recess taken.)

MR. PRIDE: Q At what time did you see Officers Strom and House on February 28, 1964?

A About 9:30.

Q Where did you see them?

A At 48th and Wabash.

Q On the corner?

A In the police station.

Q That was at 9:30 a.m.?

A Right.

Q Now, do you know what tour of duty they were working on that particular day?

A What hours?

Q Yes, that is what tour means.

A 8:00 to 4:00.

Q You called before you went there?

A No, I didn't.

Q Where were they when you arrived there?

A In the office.

[fol. 30] Q In what office?

A In the vice office.

Q And at what time did you see them?

A About 9:30, quarter to ten.

Q Now, how long did you stay in the poolroom that morning?

A Until about 9:00 o'clock, 9:15.

Q What is the address of that poolroom?

A I don't know the address, it is between 48th and 47th on Calumet.

Q On Calumet between 47th and 48th, is that right?

A Right.

Q Would that be near the corner of 47th or 48th?

A That would be near the corner of 47th.

Q And is that poolroom still there by chance?

A Yes, it is.

Q. On which side of Calumet is it, the east or the west side?

A. The west side.

Q. Now, do you know what is on the corner of—on the northwest corner of 47th and Calumet?

A. Northwest corner?

Q. Yes.

A. Yes.

[fol. 31] Q. What is there?

A. A drugstore.

Q. The drugstore is on the southwest corner.

A. Oh, it's a pawnshop. Beg your pardon.

Q. Now, the poolroom, according to your directions, would be north of that pawnshop on Calumet, is that correct?

A. North of the pawnshop?

Q. Yes.

A. No, it would be south of the pawnshop.

Q. The pawnshop is right on the corner of 47th and Calumet?

A. Right.

Q. South would be across the street, wouldn't it?

A. That's right.

Q. Well, isn't the drugstore across the street?

A. That's right.

Q. Then where is the poolroom located in relation to the drugstore?

A. Right behind the drugstore, going south.

MR. MARTWICK: Object to this line of questioning.

MR. PRIDE: Q. Now, do they sell narcotics in the poolroom?

A. Do they sell it in there?

[fol. 32] Q. Yes.

A. I don't know.

Q. Did you buy any narcotics on February 28, 1964?

A. Yes, I did.

Q. At what time?

A. About 10:00 o'clock.

Q. 10:00 o'clock in the morning?

A. 10:30, 11:00 o'clock, something like that.

Q. How much did you buy?

A One bag.

Q Now, where did you get that money?

A From Officer Strom and Officer House.

Q And at what time did they give you the money?

A About 10:30.

Q At what time did you buy the narcotics then, about 10.30 or 11:00 o'clock?

A About 11:00 o'clock when I got the narcotics.

Q What time did you use the narcotics?

A I didn't use it.

Q What if anything did you do with the bag of narcotics you bought at 11:00 o'clock?

A I gave it to the officers.

Q Is this the bag that you say you got from Fleming Smith?

A That's true.

[fol. 33] Q Now, did you buy any other narcotics on that day?

A I don't remember.

Q Did you use any narcotics on that day?

A I don't remember.

Q You might have used narcotics on that day, is that correct?

A I could have, that is February, that is a lot of days.

Q I'm well aware of that. Did you tell the officers how much the narcotics would cost?

A Yes, I did.

Q What did you tell them?

A I told them a half of a sixteenth would cost me \$7.

Q \$7 even?

A That's right.

Q Did you ask them to give you one dollar in change?

A Did I ask them to give me one dollar—

Q Yes.

A They gave me one dollar in change.

Q Did you ask for it like that?

A No, I didn't.

[fol. 34] Q Now, it is a fact that you were using narcotics during the month of February, 1964, isn't it?

A That's true.

Q And as far as you can recall you were using about a bag a day at that time?

A I don't use a bag a day all the time, sometimes, like I just had a bag Friday, I haven't had one since Friday, sometimes it be two or three days since I have a bag.

Q Will you roll up your sleeves? How old are those marks there?

A That could be Friday. (Indicating)

That was nothing, that was a pinch from this morning.

Q That is fresh?

A No, it's not even a mark from a needle.

Q What is this here? Right here?

A That is a needle mark.

Q When did you inject narcotics there?

A Friday.

Q I would like for the Court to examine this man's arms.

Turn your arm over there. Here is a puncture which [fol. 35] he says was injected Friday.

THE COURT: Where is that?

MR. PRIDE: Right there.

THE COURT: This mark here? Oh, I see, that little one.

MR. PRIDE: Yes, but it is still open.

A I can't even go in there, I can't shoot in there, this is a little bitty thing. I can't find that.

MR. PRIDE: Do you have a flashlight?

THE DEPUTY BAILIFF: No.

A I can't even go in those, they are too small.

MR. PRIDE: Q But you said that that is from Friday, didn't you?

A No. I told you this, this is from Friday.

Q This was made when, this is a puncture of Friday? That is where you stuck the needle?

A Friday.

Q That is from Friday?

A Right.

Q It hasn't even closed up yet.

A You can't find nothing there.

Q This hasn't closed up yet.

MR. MARTWICK: Object to Mr. Pride testifying what has closed up and what isn't closed up.

A It's there. I haven't had anything.

[fol. 36] THE COURT: Let the record show the Court has observed a needle mark.

MR. PRIDE: Q You stated that when you wanted to kick your habit you just stayed in your house for about 4 days?

A Not when I want to, that is just one of the times I decided to quit.

Q Do you have a desire to stop using narcotics?

A Sometimes I get the desire.

Q And what do you do when you get that desire?

A Sometimes I just keep on.

Q Keep on?

A Like I have been.

Q Do you have any other source of income except the money you receive in your employment as an informer?

A Yes, I have.

Q What is your other source of income?

A Shooting pool in the poolroom.

Q And you get the money to shoot pool from the police officers, is that correct?

A I get paid from the police officers.

Q And you said that you got paid approximately twice a week at the rate of \$10 a day, is that correct?

[fol. 37] A At the rate of \$10 a day?

Q Yes.

A Sometimes it is \$10, sometimes it is more.

Q Under what conditions would you receive more than \$10 for your work?

A Because it would be for some other job that I have did.

Q Because of what?

A It would be for some other work I have did.

Q Other than making controlled buys of narcotics?

A No, it would be controlled buys.

Q Well, what would determine the amount of money that you would receive?

A What would determine it?

Q Yes.

A What do you mean? I don't understand that.

Q How would the police officers determine the amount of pay to give you for your work?

A Well, that is up to them, they pay me for what I would do.

Q They would give you whatever they wanted?

A That's right, they would pay me for what I would do.

Q Did you keep any record of what you received from [fol. 38] January of 1964 until this time?

A No, I haven't kept a record but I could probably give an estimation of it if I thought of it.

Q What would your estimate be?

A From what time did you say?

Q From January, 1964, until the present time?

A I'd say about 3 or 400.

THE COURT: How much did he say?

MR. PRIDE: Three or 400 since January, 1964.

Would that be from Officer Strom and House?

A Would it be from them?

Q Yes, alone?

A No, it wouldn't.

Q That would be from all officers for whom you have worked?

A This money is not coming from the officers.

Q Where does the money come from?

A It comes out of a contingency fund.

Q What do you mean by contingency fund?

A It's some kind of box that they have in each station, at 11th Street and 48th Street, and I get money out of there and sing for it, I have to sign for it everytime I get some money.

Q Now, can you get this money whenever you desire it?

[fol. 39] A No, I can't.

Q You can only get this money when you can make a controlled purchase of narcotics, isn't that correct?

A No, that is not correct.

Q Well, when can you get it then?

A I can get it when I make a controlled buy and sometimes I can get the money if I need it.

Q And if you get it when you need it then you are expected to make a controlled buy at a later date, isn't that correct?

A I don't know.

Q Well, they just don't give you the money because they like you, do they?

A They might think I deserve it.

Q They give it to you because you work, isn't that correct?

A That's true.

Q So if they give it to you and you haven't made a controlled buy you are expected to make one, isn't that correct?

A Maybe.

Q Now, when is the last time you receive any money from Officer House or Officer Strom?

A The last time I received some money from them?
[fol. 40] Q Yes.

A I haven't received any money from them, I told you that came from the contingency fund.

Q When is the last time you received money from the contingency fund prior to coming to court today?

MR. MARTWICK: I didn't hear the last part of that question.

MR. PRIDE: Prior to coming to court today.

A One day last month.

Q Do you know approximately what day that was?

A It was the end of the month, near the end.

Q About the 28th of August?

A Maybe something like that.

Q Have you ever sold narcotics?

A Have I—no, I haven't.

Q Have you done any other work—strike that.

Have you done any work at all since August 28, 1964?

A Yes, I have.

Q Where did you work since that time?

A I did janitorial work.

Q Where would that be?

A The Tulane Building, 47th and Calumet.

Q What is the address of it?

[fol. 41] A That would be 4707.

Q 4707?

A Right.

Q Calumet?

A Right.

Q That would be on the west—I mean on the east side of Calumet, wouldn't it?

A Right.

Q What is on the southeast corner of 47th and Calumet?

A The southeast corner?

Q Yes.

A It's a hat store there.

Q That is Eloise's Hat Shop?

A That's right.

Q What is immediately and directly south of Eloise's Hat Store on Calumet now and since—rather, immediately prior to August 28, 1964?

MR. MARTWICK: Object to this.

MR. PRIDE: This goes to the credibility of this man's testimony.

THE COURT: He may answer.

MR. PRIDE: What is immediately south of Eloise's Hat Store on Calumet in the 4700 block?

[fol. 42] A Since that building has been torn down—it was the Tulane Building, since August it has been torn down.

Q Do you know when that building was torn down?

A Do I know when that building was torn down?

THE COURT: He said since August.

MR. PRIDE: This is important.

THE COURT: He just said since August.

A Since August.

MR. PRIDE: He just said it was torn down.

THE COURT: You asked when it was torn down after he said it was torn down in August.

MR. PRIDE: All right. It was torn down in August?

A In August, it has been torn down since then.

Q When was it torn down?

A I don't know the exact month it was torn down.

Q I want to clear this up, your Honor. First he said it was torn down in August and—

THE COURT: He said since August.

A Since August.

MR. PRIDE: Q When was it torn down?

A I don't know exactly when it was torn down.

Q For whom did you work in the Tulane Apartments?

A Pardon?

[fol. 43] Q For whom did you work in the Tulane Apartments?

A I worked for Mr. Coleman, he was the janitor there.

Q I didn't ask you that.

On what days did you work there?

A On what days did I work there?

Q Yes.

A Everyday.

Q From what date up until what date?

A From November of '63 until around March or February of '64, around March.

Q March of '64. How much did you receive for working there?

A My rent was free and I would get \$25 every 1st of the month from him.

Q Now, I will redirect you to August 28, 1964, which is the last date, last approximate date on which you received money from the police contingency fund, and I will ask you again what if any work you have done since August 28, 1964?

A What work have I done since—

Q Yes. I asked you once before and you said you worked at the Tulane Apartments. Now, since you stopped working there in March, 1964—

A Yes.

[fol. 44] Q And since it was torn down since that time—

A Yes.

Q I ask you again, where have you worked since August 28, 1964, up until the present date?

A From August up to the present date?

Q Yes.

A I worked for the police.

Q Well, you said you didn't receive any money from the contingency fund since August 28, 1964.

A I didn't say—

MR. MARTWICK: Object, he said approximately. That is counsel's date. He said approximately.

A I didn't say that.

MR. PRIDE: Q When was the last time you received any money from the contingency fund?

A September—what is this?

MR. PRIDE: This is September.

THE COURT: Today is September 21st.

A October; it was the last of October.

MR. PRIDE: Q The last of October was when you received money? When was that, 1964?

A Right.

Q How much narcotics have you used today?

A Today?

[fol. 45] Q Yes.

A None.

Q Do you know what day this is?

A This is the 21st.

Q Of what month?

A September.

Q But the last time you received money from this contingency fund was in October of 1964, is that correct?

A No, I take that back now.

Q I see. When was the last time you received money from the police contingency fund?

MR. MARTWICK: Object, he answered the last part of August.

THE COURT: Well, now he said he took it back, let him answer.

A I can't get the direct date, if this is the 21st and I had—

MR. PRIDE: Q I ask that he be directed to stop looking at the calendar to pick his date.

THE COURT: Well—

A You are asking me something, I have no desire to keep this in mind when I receive money.

Q Have you received any money from the police con-[fol. 46] tingency fund in the month of September?

A Yes, I have, that is why I taken it back.

Q How long ago was that?

A I guess it has been about two weeks.

Q In other words, you have received no money from your source of employment for about two weeks, is that correct? Just answer yes or no.

A That is true.

Q Now, where do you live now?

MR. MARTWICK: Objection.

MR. PRIDE: This is material.

MR. MARTWICK: Objection, Judge.

THE COURT: Yes, objection allowed.

MR. PRIDE: Q Do you pay rent where you live now?

A No, I don't.

Q With whom do you live?

MR. MARTWICK: Objection.

MR. PRIDE: I'm not asking him to give the names.

THE COURT: Strike it.

MR. PRIDE: Q Do you live alone?

A No, I don't.

Q Do you live with your wife?

MR. MARTWICK: Object.

MR. PRIDE: This is material, I'm not asking him to [fol. 47] give names.

THE COURT: He may answer as to whether he lives with his wife.

MR. PRIDE: Q Are you married?

A Do I have to answer that, your Honor?

THE COURT: Yes, answer it.

MR. PRIDE: Well, you don't really have to answer any of this if you don't want to.

MR. MARTWICK: Object to counsel's remark and ask that he be directed to just ask questions.

THE COURT: Are you withdrawing the question?

MR. PRIDE: Well, he doesn't—he comes here as a witness and he acts as though it is a very difficult task to answer.

THE COURT: No, he doesn't. He asked me a proper question, he asked if he had to answer that.

MR. PRIDE: Q Are you married?

A I haven't made any task out of anything.

THE COURT: Yes, strike that remark about making a big task out of it.

MR. PRIDE: I don't understand you, Judge.

THE COURT: I struck the remark about you saying it was a task.

MR. PRIDE: All right, Judge.

[fol. 48] Are you married?

A No, I'm not.

Q Do you live with your mother?

MR. MARTWICK: Objection.

THE COURT: Strike that.

MR. PRIDE: Q Does the police department pay your rent for you?

MR. MARTWICK: Objection—withdraw the objection.

THE COURT: He may answer that.

MR. PRIDE: Q Don't you know?

A What?

MR. PRIDE: Whether or not the police department pays your rent.

A No, they don't pay my rent.

Q Do they buy groceries for you?

A No.

Q Do they buy your clothes?

A No.

Q Do you buy your own clothes?

A Right.

Q Do you pay your own rent?

A No.

Q Do you buy your own food?

A Yes.

[fol. 49] Q Where have you gotten the money for the last two weeks to take care of those articles?

MR. MARTWICK: Objection, Judge.

THE COURT: He may answer if he got any money.

A Playing pool in the poolroom.

MR. PRIDE: Q You mean you were betting on the outcome of the game?

A That's correct.

Q Where were you getting the money to bet on the outcome of the game?

A Money that I had from the contingency fund.

Q You saved that money?

A I haven't saved anything, that is when I have it I use it and win with it.

Q But you haven't received any for the last two weeks?

A That's right.

Q And your narcotics cost you approximately \$5 a day, isn't that correct?

A No.

Q Well, you say that you use a bag a day when you are using it?

A Well, that would be \$35 a week and I don't use that much.

[fol. 50] Q How much do you use?

A I said sometime I use a bag a day, I haven't had any since Friday.

Q How many times did you shoot last week?

A Two times of my knowing.

Q And the week before?

A I can't remember when I haven't the habit. When I have the habit I would remember because it would be every day.

Q Do you know Raymond Caruthers?

A Raymond Caruthers?

Q Yes.

A I don't. I know a Caruthers, I don't know if it is Raymond or not.

Q Have you ever bought narcotics from him?

A No, I haven't.

Q Do you know Curtis White?

A Curtis White?

Q Yes.

A I don't recall his name.

Q Well, when you were using narcotics you would buy it from somebody, wouldn't you?

A Yes, that is true.

[fol. 51] Q Did you ever buy any from Curtis White?

A I don't remember.

Q Do you know Herbert Simpson?

MR. MARTWICK: Object to drawing out all of these names, he—

MR. PRIDE: He knows what I mean.

THE COURT: I think you established enough here to check his memory.

MR. PRIDE: Q Prior to February 28, 1964, how long had you known Fleming Smith?

A This is before February 28th that you want to know how long I know him, is that right?

Q Yes, that's right.

A About six years.

Q And on the morning of February 28, 1964, prior to the time that you went to the police station and told Officer Strom and Officer House that you could make a buy of narcotics for them had you talked to Fleming Smith?

A Yes, I talked to him.

Q At what time on that day?

A On that day? No, I hadn't talked to him on that day, no.

Q Had you made arrangements—had you talked to [fol. 52] him the day before?

A No, I had saw him that week.

Q Did you make any arrangements to meet him at the restaurant at 317 East 43rd on February 28, 1964?

A No, I didn't.

Q And when is the last time you had seen him prior to that date?

A I had saw him two or three times that week.

Q Had you seen him the day before?

A The day before?

Q Yes.

A No.

Q Did you know that he would be in the particular restaurant at that particular time on that morning?

A I didn't know he would be in the particular restaurant, no.

Q Did you tell the police officers he would be there at that time on that morning?

A No,

Q Now, you said that when you went up to the restaurant one was across the street and one was outside the restaurant, is that correct?

A No, I didn't.

[fol. 53] Q What did you say about the two officers in regard as to what happened to them after you went into the restaurant?

A We went into the restaurant—

Q Who do you mean we?

A Well, I went into the restaurant.

Q Yes.

A Officer Strom was across the street and Officer House was diagonally across the street.

Q They were both across the street?

A That's right.

Q How far is this from the elevated station on 43rd?

A This is right under the elevated station.

Q And there are a lot of people going in and out of there, isn't that correct?

A Sometimes.

Q And there are buses running on that street, isn't that correct?

A That's true.

Q And automobiles are running on that street in two directions, isn't that correct?

A Yes.

Q Now, how wide is that street, if you know?

[fol. 54] A I don't know.

Q Can you estimate the width of it?

A No, I wouldn't have no idea.

Q Would you say it is as wide as the average city thoroughfare on which a bus runs?

A I guess so.

Q So the officers at least had the sidewalk and the street as distance inbetween them and the front of the restaurant, isn't that correct?

A Across the street, you mean?

Q Yes.

A That's right.

Q Now, how long did you stay in the restaurant?

A About five minutes..

Q Were there any other people in the restaurant at the time?

A Yes, there were.

Q How many people?

A About 9 or 10 people.

Q And where was Fleming Smith when you went into the restaurant?

A Right at the door as I go in.

Q And where was he when he handed you the narcotics?

A Same position.

[fol. 55] Q He didn't change his position, he just stood in the doorway and handed you a package of narcotics?

A He wasn't in the doorway, I said he was right at the side of the doorway as I walked in, he was at the counter.

Q What if anything did you say to him when you walked up to him?

A I said I wanted to buy a bag, a half of a sixteenth.

Q Did you greet him in any way, say, hello?

A Yes, I spoke to him.

Q And you told him you wanted to buy a half of sixteenth?

A That's right.

Q And what did he say?

A He said he didn't have any halves.

Q What did you say?

A He said he only had \$5 bags.

Q And you asked him to give you a \$5 bag for 4.75?

A 4.75, that's right.

Q And he gave it to you?

A That's right.

Q And you handed him 4.75?

A Right.

[fol. 56] Q And then you went out immediately, is that correct?

A When he gave it to me?

Q Yes.

A Yes.

Q And it took five minutes for that transaction to take place?

A Just about.

Q And then you walked where, to the car?

A I didn't walk directly to the car then.

Q Where did you walk?

A When I came out of the door Officer Strom came across the street, he was diagonally, as I told you, when I came out of the door he came across the street and I taken out my handkerchief and wiped my face to let him know I had bought the narcotics and he followed me down the street to the car, west on 43rd to Prairie.

Q Which way was it, east or west?

A West on 43rd to Prairie.

Q Now, what if anything did Officer Strom do—he was the one that followed you?

A He walked with me to the car.

[fol. 57] Q And, now, on direct testimony you said you walked back to the car and saw Officer Strom?

MR. MARTWICK: Objection.

MR. PRIDE: Well, we can let the court reporter read it.

THE COURT: I think he said he walked back to the car.

MR. MARTWICK: That's right.

MR. PRIDE: Q Now, did you walk back to the car and see Officer Strom or did he come across the street and walk with you?

A Your Honor, when I said I was going back to the car someone said—

MR. PRIDE: Just a moment. Answer my question.

THE COURT: Answer his question.

MR. PRIDE: Q I asked you did he come across the street and walk back with you or did you walk back there and see him at the car as you said on direct examination?

A He was walking behind me all the way until we got to the car.

Q So then when you walked back to the car you saw him?

A That's right.

[fol. 58] Q Now, you gave him a signal indicating that you had made a sale, is that correct?

A That's correct.

Q And you had given him the name of a man from whom you were going to buy the narcotics, is that correct?

A That's correct.

Q And that man was in the restaurant?

A Right.

Q Isn't that, correct? And this man had the money which you had just given him, isn't that correct?

A I gave it to him.

Q Well, I say, he had the money which you had just given to him but when you gave officer Strom the signal that the sale had been consummated you walked back towards the car and he walked back with you, that was two blocks away, right?

A No, it wasn't.

Q How far was it?

A About a half block.

Q Well, the car wasn't right on the corner, you said it was between 43rd and 44th on Prairie?

A That's right.

Q That is where it was parked?

[fol. 59] A That's right.

Q And you were under the "L" station?

A Well, that is a half block.

Q Well, it was at least a block away, isn't that correct?

A Well, yes, a block.

Q Did you ever go back to the restaurant after Officer Strom followed you to the car?

A No, I didn't.

Q And do you know what if anything Officer House did after you went back to the car?

A Do I know what he did?

Q If anything, yes.

A No, I don't.

Q What did Officer Strom do if anything when you gave him the package of narcotics?

A He left me, going back that way, that is all I know.

Q What did you do then?

A I walked on south on Prairie.

Q And you gave then \$2.25 change?

A Right.

Q Did you see Herbert Simpson in that restaurant when you went in that morning?

[fol. 60] A I don't remember.

Q You could have seen Herbert Simpson?

A No, because I think if I had seen him I would remember.

Q Do you know Herbert Simpson?

A Yes, I know him.

Q And you have bought narcotics from Herbert Simpson, haven't you?

A I have.

Q Isn't it a fact that you, on the 28th of February, 1964, you told Officer Thomas King and Officer Kelly that you purchased narcotics from Herbert Simpson and that case is now pending in the courtroom of Judge Nathan Cohen?

A I don't know if it was that date.

Q If you saw a copy of the indictment would it refresh your recollection?

A It might would.

Q Did you have occasion to go to the Grand Jury of Cook County and testify that on any date in 1964 you purchased narcotics from one Herbert Simpson?

A In 1964?

Q Yes.

A Yes.

[fol. 61] Q And do you recall whether or not that was in February of 1964?

A It could have been.

Q It could have been the 28th of February, 1964?

A I don't know if it was the same date.

Q Have you been told by Officer Kelly and Officer King that you will be called to testify in regard to your purchase of narcotics from Herbert Simpson on February 28, 1964?

A I don't recall that.

Q You recall everything that happened in reference to this particular case though?

A You said do I recall of Officer King telling me of this case, of the 28th?

Q Yes.

A I don't know that.

Q All right. I'll ask you one more question in regard to this, you are aware of the fact that you are under oath to tell the truth?

A That's right.

Q Did you purchase narcotics from anybody else on February 28, 1964, besides Fleming Smith?

A I don't remember.

Q Did you ever tell any police officers that you pur-[fol. 62] chased narcotics from Herbert Simpson on February 28, 1964?

A I don't remember that.

Q Is there any written note or document that will enable you to refresh your recollection as to whether or not you purchased narcotics from Herbert Simpson on February 28, 1964?

A That is possible, because if I did the same procedures was taken as was taken for this sale here.

Q I didn't ask you that.

A You are asking me would I know—

Q Just a minute, I'll ask the questions.

THE COURT: Just answer the questions.

MR. PRIDE: Q Have you at any time given any statement under oath saying that you positively purchased heroin from one Herbert Simpson on February 28, 1964?

MR. MARTWICK: Judge, I'm going to object, I think it has been fully covered.

MR. PRIDE: Judge, I want to go into this, this is a matter of credibility.

THE COURT: He said he didn't remember if he ever told any officer.

MR. PRIDE: Q You say that you don't remember? [fol. 63] THE COURT: He made the statement.

A I don't remember.

MR. PRIDE: Q And you don't remember going to the Grand Jury and testifying that you sold narcotics to Herbert Simpson on February 28, 1964?

MR. MARTWICK: Object to this line of questioning, the Simpson case, if it goes to trial, is another matter.

THE COURT: I think it has been established that the date he doesn't remember.

A Your Honor, do I have to remember every date—

MR. PRIDE: Just keep quiet, I'll see if you can remember it when you take the stand in the other case.

THE COURT: Just answer the question.

MR. PRIDE: Q Did you go to the Grand Jury and testify on March 5, 1964, that you sold narcotics—strike that.

Did you go to the Grand Jury and testify on March 5, 1964, you purchased narcotics from Raymond Caruthers?

MR. MARTWICK: I object at this time, if counsel wants to try these other cases in this courtroom—I think he has tested his memory as far as the facts go.

THE COURT: He said he doesn't remember any other [fol. 64] persons on that date.

MR. PRIDE: Q How many times have you been in the penitentiary all together?

A What did you say?

THE COURT: How many times have you been in the penitentiary all together?

A Once.

MR. PRIDE: Q And you have been to Vandalia once?

A That's right.

Q How many times have you been in the County Jail?

A About three times.

Q How many cases do you have pending against you now?

A What do you mean cases pending against me?

Q Cases against you, cases in which you are named as the defendant?

A One.

Q What is that for?

A Burglary.

Q Who is the arresting officer in that case?

A Officer Perkins.

Q Who?

A Officer Perkins.

[fol. 65] Q Perkins. When do you go to trial on that case, when is it set for trial?

A November 27th.

Q And in what court is that?

A 706, Judge Friedlund.

Q Judge who?

THE COURT: Friedlund.

MR. PRIDE: In this particular court.

Now, have you been promised any leniency in that case for testifying in this case?

A No, I haven't.

Q Do you expect any leniency?

A No, I don't.

Q You don't expect any consideration at all for testifying against this defendant?

A No, I haven't had no bargain.

Q Or are you receiving any money for testifying against this defendant?

A I'm receiving money for working for the police.

Q But you haven't received any for the last two weeks, isn't that correct?

A That's correct.

Q Have you been promised anything for testifying in [fol. 66] this case?

A No, I haven't.

Q Do you expect to receive any?

A I probably will.

Q Do you expect to receive anything?

A I don't know for sure.

Q Do you expect to receive any?

THE COURT: He said he doesn't know for sure.

MR. PRIDE: Q He can't say I don't know whether or not I expect, this is a state of mind over which he has control, his expectations.

THE COURT: He said I suppose I will.

MR. PRIDE: All right.

THE COURT: He said I don't know for sure.

MR. PRIDE: Q You expect to receive money for testifying in this case, don't you?

A I don't know whether testifying in this case would get me any money or not.

Q I didn't say would get you, I said, don't you expect them to give you some?

A I don't know.

Q You don't know what you expect.

On direct examination you identified this list as being [fol. 67] a list of United States currency which was given to you by Officers House and Strom, is that correct?

A I did.

Q And were you present when the notations "Used," and "recovered," were placed after certain of those bills?

A What is this?

Q Do you see where the words "used" and "recovered" in the handwriting are placed after those bills?

A No, that wasn't on there when I saw the paper.

Q Did you ever see it after you turned the money back?

A No.

Q Do you know whose writing that is?

A Where.

Q Where it says "used" and "recovered."?

A No, I don't.

Q It isn't your?

A No.

Q All you did was receive the money from them, is that right?

A I received the money from them and signed down here.

Q And signed down here. That is all. Thank you.

MR. MARTWICK: That is all.

[fol. 68] THE COURT: You may step down.

THOMAS STROM,

called as a witness on behalf of the State of Illinois, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Martwick:

Q Would you state your name, Officer?

A Officer Thomas Strom, 2nd District.

Q By whom are you employed, sir?

A Chicago Police Department.

Q How long have you been so employed?

A Four years.

Q And what is your present assignment, sir?

A Vice officer, 2nd District.

Q Where is the 2nd District located?

A 4802 South Wabash.

Q Calling your attention to the 28th day of February, 1964, were you so employed, sir?

A Yes, I was.

Q And your assignment on that day was what?

A Vice officer.

Q On the 28th day of February, 1964, what watch were you working?

[fol. 69] A Days, from 8:00 to 4:00.

Q Calling your attention to approximately—strike that.

On that date, on February 28, 1964, did you have occasion to see James Jordan, sir?

A Yes, I did.

Q Did you see him in court today?

A Yes, I did.

Q Was that the man that just previously testified?

A Yes.

Q Approximately what time of the day did you see Mr. Jordan?

A He came in approximately 9:30, 9:20, something like that, into the Vice Office.

Q Did you have a conversation with him on that day?

A Yes, I did.

Q Who was present during your conversation, Officer?

A Officer House, my partner.

Q And who else? Yourself and Mr. Jordan?

A Myself, the vice coordinator.

Q After your conversation did you have occasion to go anywhere and do anything?

A Yes, we did.

[fol. 70] Q What did you do, Officer?

A My partner and I and James Jordan went to 43rd Street, underneath the elevated.

Q What if anything did you do at the elevated at 43rd Street?

A A man named Fleming Smith was pointed out to us.

Q After this what did you do?

A Went back to the station with James Jordan.

Q When you got back to the station with James Jordan what if anything did you do then?

A We had him strip and searched his clothing and his person.

Q Did that search reveal anything?

A No, no narcotics or money.

Q Did you permit him to dress after that?

A Yes, we did.

Q Do you know if he had anything on his person after he was dressed?

A He had a wallet, handkerchief.

Q Had you looked through this wallet and handkerchief?

A Yes.

Q Was there anything in the wallet and handkerchief?

A Miscellaneous papers in the wallet and nothing in [fol. 71] the handkerchief.

Q Any narcotics or money in the wallet or handkerchief?

A No, there wasn't.

Q After you permitted Mr. Jordan to dress what did you do?

A We wrote down or typed, took six one dollar bills from the contingency fund and four quarters, we typed the serial numbers down on a piece of paper of the six one dollar bills and we marked a "T" or little slash under the "T" in the word liberty on the quarters. We then asked James Jordan to check them with us, comparing the

serial numbers that I had typed to what was on the bills, he did and he signed for them and we gave it to him.

Q Now, I show you—

A And we signed for it too.

Q I show you part of People's Group Exhibit No. 1, for identification, a sheet of paper and another part of People's Group Exhibit No. 1, for identification, four one dollar bills and ask you to look at all of them, sir.

A Yes. This is the sheet.

Q Have you looked at them, sir?

[fol. 72] Q What if anything can you tell us about this sheet of paper—

I show you the first line, a signature, and ask you if you know who put that signature on there?

A That is my signature.

Q Now, what if anything can you tell us about this paper and the four one dollar bills marked part of People's Group Exhibit 1, for identification?

MR. PRIDE: Objection.

THE COURT: Objection sustained.

MR. MARTWICK: Q Is that the list and money, sir, that you saw on that date?

A Yes, it is.

Q Now, after you had given Mr. Jordan this money what did you do then, sir?

A We then went back—got into the car and drove to approximately 4317 South Prairie and parked the car.

Q And what did you do then, sir, after you parked the car.

A Pardon?

Q And what did you do then, sir, after you parked?

A All three of us got out of the car.

Q And what happened then?

[fol. 73] A Well, I crossed the street and walked on the north side of 43rd Street underneath the elevated, my partner Officer House and James Jordan walked on the south side of the street towards the elevated.

Q And did you have occasion to see where James Jordan went, sir?

A Yes, I did.

Q Where did you see him go?

A He went into the restaurant at 317 East 43rd.

Q Did you have occasion to see where your partner was at?

A Standing outside or off to the side, like he was waiting for a bus or where the people wait for a bus, in the bus stop.

MR. PRIDE: Object, move the latter part be stricken.

THE COURT: I didn't get that, read that back.

(Last answer read by reporter.)

THE COURT: You want what part stricken?

MR. PRIDE: The latter part, he can't testify he was standing like something.

THE COURT: That is the first part.

MR. MARTWICK: That is the first part.

THE COURT: That is the first part.

[fol. 74] MR. PRIDE: All right, the first part.

THE COURT: The reference to 'like a bus stop' will be deleted.

MR. MARTWICK: Q Approximately how long did you stand in the position you were standing in that location?

A Five minutes.

Q And after five minutes did you observe anything?

A Yes.

Q What did you observe, sir?

A James Jordan came out of the restaurant.

Q Did you observe him do anything?

A Yes, he wiped his face with his handkerchief.

Q And did you have occasion to observe what he did after that?

A Yes, he walked west on 43rd, on the southside of the street.

Q And what did you do at the time?

A Crossed the street and walked behind him.

Q And did you stop at a subsequent time?

A Yes, back at the car.

Q And when you got back to the car what if anything happened?

A He gave me a tinfoil package and the \$2.25 in change, he stated that he had purchased this package [fol. 75] from Fleming Smith.

Q What happened then, sir?

A I told him that he could go, that I would see him later. I field tested the white powder that was in the package and it proved to be positive. I then put it in my pocket, got in the squad car and drove to the restaurant and entered it, I placed Fleming Smith under arrest.

Q Did you place him under arrest in the restaurant, sir?

A Yes, I did.

Q Now, after you placed him under arrest in the restaurant, sir, what did you do?

A Put handcuffs on him and searched him for a weapon and then placed him in the squad car, there were too many people there.

Q When you searched him for weapons what did you do, sir?

A Patted his pockets, underneath, just a frisk, handcuffed him behind his back and put him in a squad car.

Q After he was put in a squad car did you take him any place?

A I took him to the 2nd District Station.
[fol. 76] Q 48th and Wabash?

A Yes, sir.

Q After you got to the 2nd District Station what did you do?

A We took the handcuffs off him and made him empty his pockets.

Q Where particularly in the Wabash or 48th Street Station were you?

A In the Vice Office, it's an office—

Q Approximately what time of the day was this, sir?

A This would be about 11:15.

Q And who was all in the office at that time?

A My partner Officer House and myself and Fleming Smith.

Q Now, was there any conversation at this time?

A Yes, I told him to empty his pockets which he did.

Q And did Mr. Smith say anything at this time?

A Not right at that time, no. He emptied his pockets, I went through his money and recovered four one dollar bills which corresponded to the list that we had previously made up. I asked him if this money was his and he said, "Yes." I said, "This is our money, police money." He said, "I don't know how it got in my pocket." I then asked him if he had any more narcotics on him and he said, [fol. 77] "Yes, I have one more bag," and he opened up the fly of his pants and took out another tinfoil bag, package.

Q Now, you say when James Jordan came back—or when you talked to him at the car he handed you a tinfoil packet, is that right, sir?

A Yes, he did.

Q And what did you do with that tinfoil packet at that time?

A I placed it in my pocket.

Q And did you ever have occasion to remove it from your pocket?

A When I got to the station.

Q I ask that this inventory slip be marked as People's Exhibit No. 2, for identification. And I'll ask that this envelope, brown sealed envelope, be marked People's Exhibit No. 3, for identification.

(Document so marked.)

MR. MARTWICK: Q Let the record indicate that I am now opening a previously sealed brown envelope with the flap sealed with scotch tape with the name C. Vondrak and "one foil package," written under the seal; and from within I am removing a small—strike that—a brown envelope, folded over, approximately the same size as People's Exhibit No. 3, and ask that that be marked People's Exhibit No. 4, for identification.

[fol. 78] (Document so marked.)

MR. MARTWICK: Q Now, after you got back to the station, sir, what if anything did you do with this tinfoil package?

A Inventoried it.

Q And when you say you inventoried it, sir, what did you do?

A We have an inventory book and I wrote in there, "one tinfoil package containing unknown white powder, no value," and who I recovered it from, where I recovered it and the various questions asked of me there, and put it in a brown envelope on which I stated all these things again on there and sealed it and signed my name over it and included what the contents was and placed scotch tape over it.

Q Now, I show you what has been marked People's Exhibit No. 4, for identification and ask you to look at that, sir.

Have you ever seen that before, sir?

A Yes, sir, I have.

Q When did you see that envelope?

A On the 28th of February.

Q And is this envelope in the same condition now as it was the last time you saw it on the 28th of February, [fol. 79] 1964?

A Yes, all except for the slit on the side.

Q Prior to the sealing of this envelope, sir, did you place any thing within it?

A Yes, a tinfoil package.

Q And what tinfoil package was that, sir?

A Pardon?

Q And what tinfoil package was that?

A The one that was given to me by James Jordan.

Q Now, you also said that James Jordan gave you \$2.25, had you ever seen that \$2.25 before?

A Yes, the two dollars was part of the six one dollar bills that I had given him earlier.

Q I'll ask that this be marked People's Exhibit—this small evidence envelope from the Chicago Crime Laboratory be marked People's Exhibit No. 5, for identification.

(Document so marked.)

MR. MARTWICK: Q Let the record show that I am opening People's Exhibit No. 5, for identification, it being

stapled, and am removing from within a tinfoil packet and ask that that be marked People's Exhibit No. 6.

(Item so marked.)

MR. MARTWICK: Q I show you what has been [fol. 80] marked People's Exhibit No. 6, for identification, and ask you to look at that.

A Yes.

Q Have you ever seen this tinfoil package before, sir?

A I couldn't identify it, a similar package.

Q Have you ever seen a package similar in size, shape and color to that tinfoil packet?

MR. PRIDE: Objection.

THE COURT: It's argumentative.

MR. MARTWICK: What is the objection?

MR. PRIDE: He has seen thousands, I'm sure.

THE COURT: He asked if he ever saw a packet similar in size to that.

MR. MARTWICK: On February 28, 1964, sir, did you see a packet similar in size, shape and color to that packet?

MR. PRIDE: Objection.

THE COURT: Overruled.

A Yes.

MR. MARTWICK: Q And what did you do with the packet similar in size, shape, weight and color to this packet that you saw on that date, sir?

A Placed it in that envelope right there.

Q For the record, indicating People's Exhibit No. 3— [fol. 81] People's Exhibit No. 4, for identification.

Now, when you first went over—strike that. When you first saw James Jordan on the 28th day of February, 1964, sir, were you able to observe his physical condition?

A Yes.

Q What was his physical condition on that date, sir?

MR. PRIDE: Objection.

THE COURT: Strike it.

MR. MARTWICK: Q Now, when you went to 43rd and the "L" with James Jordan and your partner the first time on that morning, sir, where did you see this person—strike that.

You say he pointed out a person known as Fleming Smith, is that correct?

A Yes.

Q Do you see that person in court today?

A Yes.

Q ~~Point him out.~~

A The man behind Attorney Pride.

Q For the record, indicating the defendant.

And the man you subsequently arrested that morning, do you see that person in court today?

A Yes, that is the same one.

Q And is that the same man, sir, that you took the [fol. 82] \$4 off of?

A Yes, it is.

MR. MARTWICK: Thank you.

MR. PRIDE: May I see the officer's report, please?

THE COURT: We'll take a little recess here.

(Short recess taken.)

MR. PRIDE: If the State has no objection, I'll stipulate to the chemist's report and chain of evidence and I'm making a motion, if the Court please, to put the defendant on in the morning. I have some urgent business at the office. And we'll stipulate—

THE COURT: All right.

CROSS EXAMINATION

By Mr. Pride:

Q Officer Strom, when you stationed yourself across the street from the restaurant, on 43rd Street, where the informer James Jordan had gone in, could you see into the restaurant?

A No.

Q You didn't actually see the transaction between Mr. Jordan and Mr. Smith, did you?

A No, I didn't.

Q Did the informer tell you the amount of money he would need for the purchase of the narcotics?

A Yes, he did.

[fol. 83] Q That amount was \$7?

A \$7.

Q Officer, what was the reason, if any, for giving him \$6 in currency and one dollar in change?

A Just more or less so it wouldn't look so obvious, try and not let the man know it is police money or give him any indication it is.

Q Well, did he tell you he could make the purchase for \$4.75?

A No, \$7, he was going to buy a half of a sixteenth.

Q Now, have you ever arrested James Jordan before?

A James Jordan?

Q Yes.

A No.

Q Now, when you saw him on the morning of February 28th, did he tell you he could purchase narcotics from Fleming Smith?

A Yes, he did.

Q Did he tell you that Fleming Smith would be in the restaurant in question?

A He told me he sold—he was dealing narcotics from that area under the elevated or from the Hub Restaurant or under the "L."

Q Now, did you see Officer House when he went into [fol. 84] the restaurant?

A Yes, I did.

Q And did you see where he was standing in relation to Fleming Smith?

A Not at that time.

Q Well, didn't you state in your report that Officer House went into the restaurant and took up a position next to Fleming Smith?

A That's right. This is a joint report.

Q Did you see him when he went into the restaurant?

A Yes, I did.

Q Was this immediately after James Jordan came out?

A Yes.

Q When you crossed the street could you see Fleming Smith inside the restaurant after James Jordan came out?

A No, I couldn't.

Q Do you know whether or not James Jordan used narcotics on February 28th prior to making the alleged controlled buy of narcotics?

A No, I don't. I know he was an addict. I don't understand the question.

Q You knew he was an addict?

[fol. 85] A Yes.

Q Did he ever tell you that he was working as a janitor at 4707 South Calumet?

A I can't recall him saying that.

Q You knew that he was a former convict?

A Yes.

Q Now, Officer, you signed this document which purports to be a list of the bills used in this transaction, is that correct?

A Yes.

Q Is the information on this list of bills that bears your signature accurate?

A Yes, it is.

Q It is true and authentic?

A Yes.

Q Did you recover the 3 dimes?

A Quarters?

Q Pardon me, strike that.

Did you recover the three quarters?

A We didn't recover them, no.

Q And you say that the informer was in the restaurant approximately five minutes?

A Approximately.

Q Of what did your search of the informer consist?

[fol. 86] A The informer?

Q Yes.

A All his clothes, made him bend over to see if he had anything in his rectum, underneath his testicles, in his hair, ears, hat band, various seams and linings of his clothing, complete and thorough search.

Q Did you search his shoes?

A Yes, shoes, socks, toes.

Q Now, this is a small package, now, as a matter of fact, when you received that package it was folded in a smaller—to a smaller size, wasn't it?

A. Yes.

Q. Would you estimate the size of this packet at the time it was presented to you to be about a quarter of an inch to about a half inch?

A. Approximately, yes.

Q. Well, you have seen packages of narcotics prior to this arrest?

A. Approximately.

Q. You have seen what is commonly referred to as a \$5 bag?

A. Yes.

Q. Wouldn't a \$5 bag be more that size?

[fol. 87] A. Just about.

Q. Indicating a package about one-fourth by one-half inch in demensions.

Were there any other persons in the restaurant at the time the informer went in, to your knowledge?

A. To my knowledge, I don't know.

Q. Pardon?

A. I don't know, to my knowledge.

Q. In as much as you did not see the transaction between the informer and the defendant herein, your knowledge of this alleged sale of narcotics is based on the statement of the informer, isn't that correct?

A. That along with other things.

Q. Along with receiving the money?

A. Finding the money on him, yes, sir.

Q. And nothing else?

A. And my partner's—

Q. Well, your partner was across the street?

A. No, he wasn't.

Q. Did you hear the testimony of the stool pigeon—strike that—I mean the informer?

A. Yes, I did.

Q. Didn't the informer say that both of you were across the street?

A. Yes, he did.

[fol. 88] Q. He was lying then, wasn't he?

A. No.

Q. He was mistaken?

A That's right. The second time he said that.

Q I know, he changed a lot of things, but he was mistaken about what he said?

MR. MARTWICK: Objection to counsel's characterization of the prior witness' testimony.

Judge, may we have a ruling.

THE COURT: The characterization is stricken.

MR. PRIDE: Q Did you have occasion to see any person or persons employed in that restaurant at the time you went to make the arrest?

A Well, I seen a man behind the counter.

Q And did you see a cash register in that restaurant?"

A I'll say probably.

Q Did you ask—were there any other persons working there in the front of the restaurant except the man behind the counter, to your knowledge?

A I didn't notice any.

Q Did you have occasion to ask this man if Fleming Smith had changed any money of any denomination with him?

A No, I didn't ask him.

[fol. 89] Q Did you ask him, Fleming Smith, what if anything he did with the four quarters?

A No, I didn't.

Q Didn't you want to recover the four quarters?

A No, I didn't.

Q This was part of the money which the informer said he had paid him for the narcotics, wasn't it?

A That's right.

Q But the four bills you show on the inventory list of U.S. currency prerecorded funds are in fact the four bills which you recovered from the defendant, Fleming Smith, isn't that correct?

A The four bills that are laying there?

Q Yes.

A Yes.

Q And those four bills are the same as the ones which you showed on the signed statement as "used" and "recovered"?

A This is my notation of "used" and "recovered" after the sale, this slip had been signed prior to the sale. I know there is a mistake on there—

Q There is a mistake on there?

A Yes.

Q Those four bills are not the ones you show as used and recovered?

[fol. 90] A Yes.

Q Are all four of those the ones you showed as used and recovered?

A Yes.

Q These four bills where it shows on the slip as used and recovered are the ones you actually recovered from the defendant?

A No, because—

Q You show on here four particular bills identified by serial numbers are the four bills that were used and recovered, isn't that correct?

A Yes, it is.

Q And these four bills that you show as used and recovered are not the same four bills that you have here, isn't that correct?

A Three of them are.

Q Three of them, but not the four bills?

A No, they are not.

Q Then that list is not correct, is it?

A Yes, it is.

Q It is not correct in full, in other words, the ones that you show as used and recovered, actually only three of those were used and recovered?

A On that, that is my own notation, it has nothing to do—

[fol. 91] Q What I'm saying is that this document shows four bills as used and recovered and actually only three of these which you used were used and recovered?

A That is a recording—

Q Only three of these are used and recovered, is that correct?

A Yes, of what I wrote there.

MR. PRIDE: That is all. Thank you.

REDIRECT EXAMINATION

By Mr. Martwick:

Q Officer, these four bills that are part of People's Group Exhibit 1, for identification, were those four bills used in this case?

A Yes, they were.

Q And were those four bills recovered from the person of Fleming Smith?

A Yes, they were.

MR. MARTWICK: Thank you.

We'll call Officer House.

BENJAMIN HOUSE,

called as a witness on behalf of the State of Illinois, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Martwick:

Q Will you state your name, Officer?

[fol. 92] A Officer Benjamin House, 2nd District.

Q By whom are you employed, Officer House?

A Chicago Police Department.

Q And in what capacity?

A Vice.

Q You are a vice officer?

A Yes, sir.

Q How long have you been employed as a police officer for the City of Chicago?

A Seven years the 1st of October.

Q How long have you been assigned to the 2nd District, Vice Detail?

A It will be three years, almost three years, not quite, I started in '62, in July.

Q Now, calling your attention to the 28th day of February, 1964, you were so employed as a vice officer?

A Yes, I was.

Q And what watch were you working that day?

A The second watch.

Q And on that date did you have occasion to see a person whom you know as James Jordan?

A Yes, I did.

Q Where did you see James Jordan?

[fol. 93] A 4002 Wabash, at the station.

Q That is at the 2nd District?

A That is the 2nd District.

Q When you saw him were you alone or were you with anyone?

A I was with Officer Strom.

Q At that time did you have a conversation with James Jordan?

A Yes, I did.

Q And after your conversation did you have occasion to go any place?

A Yes, I did.

Q Where did you go?

A 43rd Street, at the elevated, the street is around 370 East 43rd Street.

Q What did anyone of the three of you do at that time?

A James Jordan pointed out a Fleming Smith to Officer Strom and I.

Q After this what did you do?

A Took James Jordan back into the station.

Q And when you got back to the station was there any conversation?

A Yes, it were.

[fol. 94] Q And after the conversation what happened?

A After the conversation I stripped James Jordan of all his clothes and I searched him.

Q Did you search the clothes?

A Searched the clothes.

Q After the search was completed what did you do?

A Gave him \$6 in prerecorded money, six one dollar bills and four quarters.

Q And what if anything did you do in relation to these bills?

A We prerecorded them, that is, typed them out, and Officer Strom and myself and James Jordan, after he ex-

amined them and found out they were the same as typed, signed for them.

Q I show you what has been previously marked two parts of People's Group Exhibit 1, for identification, four one dollar bills and that sheet of paper and ask you to look at them.

A They are the same.

Q Are these the same bills and the same paper that you gave James Jordan on that date?

A The same.

Q Now, after you gave James Jordan the money, what did you do then?

[fol. 95] A We took him to about, 4248 Prairie and Officer Strom left James Jordan and myself out of the car and we proceeded to go to 317 East 43rd Street, and James Jordan was about 12 feet in front of me and I was behind him.

Q All right. What if anything happened when you arrived at that address, sir?

A James Jordan went in the restaurant and proceeded to talk to the man he pointed out earlier, Fleming Smith, and I took a position in the bus stop with a paper and was looking through the window.

Q You spoke of a Fleming Smith that you saw sometime after 9:30 and that you again saw James Jordan talking to at a subsequent time that morning, do you see that person, Fleming Smith, in the court today?

A No, he is not out there now.

Q Fleming Smith?

A Fleming Smith.

Q Do you see Fleming Smith in court today?

A Would you move your head?

Yes, that is Skip there.

Q For the record, indicating the defendant Fleming Smith.

[fol. 96] Now, what if anything did you observe James Jordan and Fleming Smith doing, Officer?

A They had a conversation, I couldn't see what they were doing.

MR. PRIDE: Objection.

THE COURT: That is a proper answer, he said they were having a conversation, I couldn't say what they were doing.

MR. PRIDE: How does he know they were having a conversation?

THE COURT: He—okay, strike the reference to conversation.

MR. MARTWICK: Q Well, did you observe Fleming Smith and James Jordan at that time?

A Yes.

Q Tell the Judge what you saw each of them doing at that time?

A I saw James Jordan walk up to Fleming Smith and I was standing up about four feet, there is a picture window, and I could see the mouths working, and in turn Fleming Smith turned his back and I couldn't see anything else.

Q All right. And did you see the—

THE COURT: Excuse me, that was through a window?

[fol. 97] A Through a window.

MR. MARTWICK: Q And did you subsequently see James Jordan leave that restaurant?

A Yes, he did.

Q And after he left—strike that.

While he was leaving the restaurant did you observe him do anything?

A Yes, we had a prerecorded signal if he had made a sale from Fleming Smith he would come out and wipe his brow with a handkerchief.

Q Did you see him do anything when he came out?

A Yes, he came out of the restaurant and wiped his brow with his handkerchief and in turn I walked in the restaurant.

Q And where did you go in the restaurant?

A I walked in the restaurant and ordered me a cup of coffee.

Q At this time where was Fleming Smith?

A Fleming Smith and another fellow were sitting on the first two stools as you enter the restaurant.

Q Where were you in relation to him?

A Sitting next to him.

Q And did anyone that you know have occasion to come into the restaurant at any subsequent time?

A About five minutes later Officer Strom came in the [fol. 98] restaurant.

Q And what if anything did Officer Strom do at that time?

A Walked up to Fleming Smith and placed him under arrest.

MR. MARTWICK: That is all. You may inquire.

CROSS EXAMINATION

By Mr. Pride:

Q Now, Officer House, you were standing right outside the restaurant?

A Yes, I were.

Q And you were about how many feet from Fleming Smith and the stool pigeon, I mean, the informer?

A No more than five feet.

Q About this distance?

A About that distance.

Q And you say Fleming Smith turned his back to you?

A Yes, he did.

Q And you couldn't see anything after that?

A I couldn't see anything.

Q Of you own personal knowledge you don't know whether or not he gave the informer any narcotics or not, do you?

A I couldn't see.

Q You don't know?

[fol. 99] A I couldn't see.

Q Not only you couldn't say, but you don't know?

A I couldn't say that.

Q Do you know that he did?

A From what the informer gave Officer Strom.

Q No, but from what you saw do you know that he gave the informer narcotics?

A No, I'd say I don't.

Q You are relying on the testimony of that informer that Fleming Smith gave him the narcotics?

A I'm relying on the prerecorded money I found on Fleming Smith.

Q No, you found the money there but you don't know for what he gave the informer if anything to get the money because you didn't see him give him anything, do you?

A No.

Q So you are not relying on the money for that, you are relying on what the informer told you?

MR. MARTWICK: Object to arguing.

MR. PRIDE: I'm not arguing, I may just sound it.

THE COURT: He is not here to testify to conclusions but is here to testify to facts that he saw.

MR. PRIDE: Q How long did it take you to travel the five feet into the restaurant after the informer left?

[fol. 100] A How long did it take me?

Q Yes, about.

A About two seconds.

Q Did you ever take your eyes off Fleming Smith after the informer left the restaurant?

A No.

Q How much money was recovered?

A \$4.75.

Q What happened to the other \$2.25?

A I gave it back to Fleming Smith.

Q You took \$4.75 from—

A No.

Q How much did you take from him?

A \$4.

Q What happened to the other 75 cents?

A I gave it back to Fleming Smith.

Q You gave the defendant prerecorded money which was part of the evidence in this case?

A Yes, I did.

Q What was your reason for giving him the 75 cents back?

A Because I didn't want him to know who our informer was at that time.

Q Well, how many—didn't you tell him why he was [fol. 101] being arrested?

A I told him we had a sale on him.

Q And didn't you tell him when the sale took place?

A Yes, I told him when the sale took place.

Q Well, how many sales did you observe there, did you observe him sell anything to anybody else?

A No.

Q Well, then didn't he know who the informer was anyway by the time he was arrested?

A Not hardly.

Q Well, what was the mystery, Officer, you came into the restaurant immediately after the sale took place?

A Yes, I did.

Q And then you sat down beside him and you arrested him and you didn't see him sell narcotics to anybody else, did you?

A No. He had about \$35 or \$40 in his pockets, he could have sold more.

Q He couldn't have sold to anybody else and you recovered the 75 cents and gave it back to him.

Now, did you put that in your report?

A No.

Q You mean you withheld information of that kind [fol. 102] from your official commander?

MR. MARTWICK: Objection.

THE COURT: Strike it.

MR. PRIDE: Q You withheld that information from this Honorable Court?

MR. MARTWICK: Objection. He just testified to it, didn't he?

THE COURT: Strike it.

MR. PRIDE: Q What did you put in your report concerning the money you recovered?

A That we recovered two dollars and a quarter from—

Q You recovered two dollars and a quarter?

A \$4 from Fleming Smith and two dollars and a quarter back from our informer.

Q And you didn't put in there that you recovered the 75 cents in marked quarters there?

A No.

Q Did you actually give your informer some marked quarters?

A Yes, I did.

Q Did you put that in your report?

A It is on this paper here.

Q May I see the report again, please? Isn't it a fact [fol. 103] that you put in your report that the informer was searched and you gave him \$7 U.S.C. which means United States currency, isn't that correct?

A Yes.

Q Isn't that what it says there?

A Yes.

Q Did you say anything about one dollar's worth of quarters and six United States currency?

A I could have gave him all quarters.

MR. MARTWICK: Objection.

MR. PRIDE: Q Do you know what U.S. currency is?

MR. MARTWICK: I have an objection.

THE COURT: Let him answer. Do you know what U.S. currency is?

A Yes, sir.

Q What is it?

A Dollar bills.

MR. PRIDE: Q And this is what you wrote on your report, seven dollars, U.S. currency, isn't that correct?

A Yes.

Q Which have been prerecorded and signed by both recording officers and police informer.

May I see the other report?

MR. MARTWICK: What other report? This is the [fol. 104] same thing.

MR. PRIDE: The one that has been altered.

I show you this report and ask you if you can identify it?

A Yes, this was sent back from recording center, I didn't do this, this is a tape.

Q Do you know where they got the information from?

A Over the telephone, Officer Strom beeped it in.

Q Officer Strom gave that information?

A Yes.

Q Would you read five lines from the bottom where it says "For the price of—how much does that say?

A "For the price of \$4.75."

Q It doesn't say \$4.75, maybe you better take off your glasses. Down here, the second line from the bottom, he was then transported to the 2nd District where a search of his person was made and \$4 U.S. currency which was prerecorded on him was found, did you make that alteration on there?

A No, I didn't.

Q Do you know who did it?

A No.

MR. PRIDE: Will you mark this Defendant's Exhibit No. 1, for identification? And this No. 2 for identification.

(Documents so marked.)

MR. PRIDE: Q Now, you have been assigned to vice for five years?

A Two and a half years.

Q Have you had occasion to make any arrests, for controlled purchases of narcotics prior to February 8, 1964?

A Yes, I have.

Q About how many?

A About 15 or 20.

Q Are you familiar with the current market rate of narcotic drugs on 43rd Street near the "L"?

A Yes.

Q What is the price for the current market rate, or what was it as of February 28, 1964, for a half of a sixteenth of heroin?

A \$7.

MR. MARTWICK: Objection.

MR. PRIDE: How much?

A \$7.

Q Could you get any lesser amount for a lesser sum?

A Oh, like a five dollar bag?

Q Yes.

[fol. 106] A Yes.

Q Have you ever heard of a \$4.75 bag?

A Short money.

Q That is short money.

But, when you gave an informer prerecorded funds you don't anticipate that he will make a sale with this so-called short money, do you?

A Yes, I do.

Q You do. But you gave this man \$7 which is the current—which was the current price for a half of a sixteenth, you didn't give him short money?

A I know it.

Q Have you ever had occasion to give any money to James Jordan?

A No, I haven't.

Q Have you ever had occasion to make it possible for him to receive money from the contingency fund at 48th Street or the 11th Street Headquarters?

A No, I haven't.

Q Do you know whether or not Officer Strom has?

A I couldn't say.

Q Was James Jordan a special employee of yours and Officer Strom's?

A Yes, he were.

[fol. 107] Q Did he receive compensation for his services?

A From the contingency fund.

Q Pardon?

A From the contingency fund and also the State's Attorney.

Q What is the procedure—what do you mean when you say the State's Attorney, are you referring to these gentlemen sitting here?

A No.

Q Are you referring to Mr. Ward?

A No.

Q To whom are you referring?

A I don't know, I don't know their names, all I know, they go out and testify and he signs something and goes out and does it.

Q Now, did you ever have occasion to do this for James Jordan?

A Yes.

Q How many times?

A Once.

Q And when was that, Officer, approximately?

A About a month ago.

Q During the month of August?

A Possibly.

Q How much did he receive, if you know?

[fol. 108] A I wouldn't know.

Q But you did sign a—

A I never signed anything.

Q Well, I thought you said that all you had to do was go down and sign?

A I said he would go down and sign.

Q I see, but you do know of your own knowledge he went down and signed and received money?

A Yes.

Q During the month of August, 1964. Is there a contingency fund at the 48th Street Police Station?

A Yes, it is.

Q Do you ever know of him receiving money from that fund?

A Not to my knowledge.

Q How many occasions have you had occasion to use him as a police informer?

MR. MARTWICK: Judge, I'm going to—well, withdraw it.

MR. PRIDE: Q Have you ever used him before?

A Yes, I have.

Q Before February 28, 1964?

A Yes, I did.

Q How many times?

[fol. 109] A After February?

Q No, before.

A About three occasions.

Q Did you have him testify in cases?

A No, I didn't.

Q Did you have him make controlled purchases of narcotics?

A Yes, I did.

Q Did you give him anything for it?

A No.

Q Do you know whether or not he received anything from the contingency fund for his services?

A I wouldn't know that.

Q Would you know approximately what he has received for working as an informer since January of 1964?

A I wouldn't know that.

Q Do you know if he had any other source of employment other than working as a police informer?

A I would know that.

Q Do you know that he has a criminal record?

A From what he told me.

Q When did you first meet him?

A About a year ago.

[fol. 110] Q And you used him several times before the 28th of February, 1964, and you didn't have occasion to investigate his background?

A No, I didn't.

Q Do you know whether or not he was a junkie?

A I had an idea he was a junkie.

Q Well, he told you he could purchase narcotics for you, didn't he?

A It takes a junkie to purchase narcotics.

Q You say it takes a junkie to purchase narcotics?

A Yes.

Q So you had every reason to believe he was a junkie?

A Possibly, I didn't question him about it.

Q You didn't question him too much?

A No.

Q You trusted him with money?

A Yes, I did.

Q Did you believe what he said?

A Yes, I did.

Q Have you had occasion to deal with narcotics addicts prior to this date?

A I have.

Q Have you found them to be generally credible?

[fol. 111] A Yes, I have.

MR. MARTWICK: Objection to other narcotic addicts.

MR. PRIDE: Q Do you have an opinion—

MR. MARTWICK: Objection.

THE COURT: Strike the reference to others and strike what his opinion is.

MR. PRIDE: Judge, why can't I ask his opinion, he is considered an expert in this field being he is assigned to vice?

THE COURT: The others are not on trial.

MR. PRIDE: If he doesn't have an opinion he can say no.

THE COURT: He said he found them generally reliable and then you are asking for an opinion. In the first place you asked for his experience and I let you go, then you asked his opinion and his opinion is not important here.

MR. PRIDE: His opinion is of no value?

THE COURT: Well, his experience is, I would say.

MR. PRIDE: All right, Judge.

THE COURT: I don't think his opinion is of value, I think he has testified to facts.

MR. PRIDE: Q Did you have conversation with Fleming Smith after you went into the restaurant?

A No.

[fol. 112] Q Did you ever ask him if he made the sale to the informer?

A No, I didn't, not in the restaurant.

Q Weren't you present when officer Strom arrested him?

A Yes, I were.

Q Weren't you present when he was taken to the police station?

A Yes, I was.

Q Was he questioned there?

A Yes.

Q Were you present when Officer Strom asked him if he made the sale?

A Yes.

Q Didn't he deny it?

A Yes, he denied it.

Q Did you confront him with your informer at any time after the alleged sale took place?

A No, I didn't.

Q Did your informer tell you that he knew Fleming Smith would be in this particular restaurant and would be in that restaurant at a certain time in the morning?

A Yes, he did.

[fol. 113] Q When did he tell you this?

A He came to the station about 9:30.

Q And what was the conversation that you had at that time and place?

A He told us he knew where he could make a controlled purchase of narcotics and I asked him, "Who from?" And he said, "Fleming Smith." I knew Fleming Smith as Skip, my partner didn't know him, so we got in the—

Q No, I asked you what the conversation was. What was the rest of the conversation?

A He said he could make a controlled purchase of narcotics from a person by the name of Fleming Smith in the restaurant at 317 East 43rd Street.

Q Did he tell you he had had an arrangement with Fleming Smith to make a buy of narcotics at that time?

A No.

Q The he was hoping that he could make a sale there, he didn't tell you definitely he could make a sale from Fleming Smith?

MR. MARTWICK: Objection, the question has been asked and answered.

MR. PRIDE: Q Did he tell you that he had talked [fol. 114] to Fleming Smith concerning a sale of narcotics that morning?

A No, he did not.

Q And he didn't, in your presence, he didn't attempt to call Fleming Smith up on the telephone, did he?

A No, he didn't.

Q Did he tell you when the last time was that he had seen Fleming Smith?

A No, he didn't.

Q Did he tell you that he hadn't seen him for a week prior to that time?

A No, he didn't.

Q He didn't tell you anything about him?

A No.

Q You say that you have had occasion to make controlled sales before?

A Yes, I have.

Q When you make controlled sales, before you give the money to the informer don't you take certain steps to make sure that he has made arrangements for the purchase?

MR. MARTWICK: Object to what they do in other cases, we are speaking of one particular case.

[fol. 115] THE COURT: Yes, strike that.

MR. PRIDE: Q Officer, isn't it a fact that when you —when the money was recovered from Fleming Smith that you were looking for five one dollar bills and you found four dollars and 75 cents, so you gave him the three quarters back and just took the four dollars?

A No, it wasn't.

Q That is not the truth?

A That is not the truth.

Q Do you know which four bills you recovered from Fleming Smith?

A It's all recorded on the yellow piece of paper.

Q Do you have an independent recollection of the serial numbers on those bills?

A No, I haven't.

Q Do you have that list? Thank you.

Officer, I direct your attention to four lines here, four instances where the words "used" and "recovered" are shown on this document and I ask you if you are the person who made those notations there?

A No, I didn't.

Q Do you know who did?

A Yes, Officer Strom, it looks like his writing.

Q Now, after four of these bills, in the same imaginary line, there is the word used and recovered, [fol. 116] do you know what that means?

MR. MARTWICK: Object, he said he didn't write it.

MR. PRIDE: He still may know what it means.

THE COURT: Well, his opinion is not necessary.

MR. PRIDE: Would you read the serial numbers on the first—

A W 4182991A, one dollar U.S.C.

Q And what after that?

A "Used and recovered."

Q Is that the bill that has the identical serial number?

A W 4182991A, yes.

Q What is the series of the serial numbers on the next line?

MR. MARTWICK: Judge, I'll object, the document and money will speak for itself, the trier of the facts can look at it.

MR. PRIDE: May I tie this up?

THE COURT: Proceed.

MR. PRIDE: Q Read the serial numbers on the next line.

A W 57868906A.

Q What does it say after that?

A Used and recovered.

[fol. 117] Q Will you show me the bill which bears the identical serial number as the serial number on the second line which says used and recovered?

A It's not on here.

Q It isn't there, is it?

That is all, thank you.

COLLOQUY

MR. MARTWICK: That is all, thank you, Officer.

MR. PRIDE: If it please the Court, I'd like to advise the defendant what the stipulation is since he refused to stipulate at one time.

Mr. Smith, I'm advising you that there is going to be a stipulation between Mr. Martwick, for the People of the State of Illinois, and myself, Walter LaVon Pride, for you and you in your own person, the defendant Smith in this cause, the stipulation that is to be read by Mr. Martwick and agreed to by me is in effect that what statements and testimony is stipulated to is the same as what Mr. Charles Vondrak, a Government Chemist, would testify to if he took the stand.

Do you understand that?

DEFENDANT SMITH: Yes.

MR. PRIDE: And that this stipulation will not in any way deprive you of any of your rights because it will be [fol. 118] exactly what his testimony would be if he took the stand.

Do you understand that?

DEFENDANT SMITH: Yes.

MR. PRIDE: Very well.

MR. MARTWICK: As to the chain also?

MR. PRIDE: Yes, make that and then I'll stipulate to the chain of evidence.

MR. MARTWICK: All right. As Mr. Walter LaVon Pride has stated, there will be a stipulation that on the 28th day of February, 1964, Charles Vondrak, a qualified police chemist who has done thousands upon thousands of chemical analysis, would testify that on that date a tinfoil packet which was enclosed in People's Exhibit No. 4, for identification, in a sealed condition, was brought to him on that day and that he cut the sealed envelope brought to him by Officer Strom and removed from therein a tinfoil packet which Officer Strom had received from James Jordan and placed into this envelope and sealed it, and when Charles Vondrak removed the tinfoil packet from People's Exhibit No. 4, he took the tinfoil packet out, which contained some white powder, he subjected the white powder to various chemical identity tests and the results showed that the tinfoil packet, the white powder [fol. 119] in the tinfoil packet was diacetyl morphine hydrochloride, commonly referred to as heroin. After doing this he placed a red V on the tinfoil packet, took it and placed it into People's Exhibit No. 5, for identification, and sealed it, and took People's Exhibit No. 5, for identification, he took the tinfoil packet, People's Exhibit 6, placed it in People's Exhibit No. 5, for identification, sealed it and placed them back into People's Exhibit No. 4, for identification, which was the envelope that Officer Strom had brought down, folded the envelope and placed the contents therein into People's Exhibit No. 3, for identification, and put the writing on it, wrote his name on the back, C. Vondrak, one foil package, and sealed it with

scotch tape at that time and turned it over to the custodian's office. And the packet brought to court today was picked up by Officer Strom and it is the same package that Charles Vondrak had sent to the custodian's office and would have been in the same condition today except for the tear which I have placed into People's Exhibit No. 3, for identification.

MR. PRIDE: It is so stipulated.

MR. MARTWICK: How old is the defendant?

MR. PRIDE: How old are you?

[fol. 120] DEFENDANT SMITH: 35.

MR. PRIDE: The defendant's age is 35.

MR. MARTWICK: Judge, with that the State would stipulate that the defendant is 35 years of age, and, with that, the State would rest it's case with the offering of People's Group Exhibit 1, for identification, consisting of the sealed envelope, the list of six prerecorded one dollar bills and four quarters with a slash below the "T" in liberty, the signature of the two officers and James Jordan; People's Exhibit No. 2, the inventory slip relating to the tinfoil packets; People's Exhibit No. 3, for identification, the sealed envelope of chemist Vondrak which I broke open; People's Exhibit No. 4, for identification, Officer Strom's envelope which he placed the tinfoil packet in; People's Exhibit No. 5, for identification, the evidence envelope which Officer Vondrak placed the tinfoil packet in and People's Exhibit No. 6, for identification, the tinfoil packet.

Those are the exhibits I'm offering in evidence, Judge.

MR. PRIDE: Which one is this?

MR. MARTWICK: Group 1.

MR. PRIDE: Your Honor, I object to People's Group [fol. 121] Exhibit 1, and show to His Honor a list which gives the serial numbers of six bills and four quarters, I object to the list in regard to the quarters because no quarters have been introduced into evidence, and I object to the remainder of the list because it purports to show that four dollars in prerecorded funds were used and recovered and I direct His Honor's attention to the serial numbers for the purpose of showing that the second bill

listed alleged to be used and recovered by the State's document and which it seeks to introduce is not among the four bills that were offered into evidence. If you check the serial numbers, the second one from the top, you will find it is not present.

THE COURT: All right.

MR. MARTWICK: The fact is, the four bills recovered from the defendant and testified as having been recovered from the defendant do appear on the list, regardless of any notation made by the officers, he testified these were the bills given to the informer and those were the serial numbers and if you check you will see corresponding serial numbers are on that list which was recorded prior to the informer going out to make the buy, which is the only foundation we have to make, that the bills are recovered and they are found on that list. The fact that he [fol. 122] indicated one being recovered—

MR. PRIDE: It should be inadmissible if for no other reason than that the quarters are there.

MR. MARTWICK: We'll strike the quarters, I don't see how that could be prejudicial to you if they found no quarters.

MR. PRIDE: Well, based on the report where he said \$7 U.S. currency was recovered from the man, it goes to the weight of this document.

MR. MARTWICK: Judge, the testimony was that the list was made out prior to going out on the controlled purchase and was made out in the 48th Street Station and after which the money was given to the special employee and after that they went out and made the controlled purchase.

THE COURT: All right, the reference to the four quarters will be stricken, otherwise it will stand as it is, and the list and the four one dollar bills will be admitted in evidence.

MR. PRIDE: I object to People's Exhibit No. 4, for identification, because it gives a police informer with a different name. This defendant, the defendant stated his name was spelled J-o-r-d-o-n, this was uncontradicted and there has been no testimony offered to show that this is

[fol. 123] the same man and that the narcotics was recovered from him.

MR. MARTWICK: Object, the record reflects his name is spelled J-o-r-d-a-n.

MR. PRIDE: He said O N like in no.

MR. TUIITE: I just had a perusal of the record made by Mr. O'Connor, the court reporter, and he read that exact point and he spelled it for the record, J-o-r-d-a-n.

MR. PRIDE: Well, I have it D-O-N. I wrote it down where it says D-O-N. I made a specific point of it. The indictment I believe is D-O-N.

THE COURT: I wrote it in my book as D-A-N, from his testimony.

MR. PRIDE: Is the informer here? Let's bring him out. I challenge you.

MR. TUIITE: It is on the record.

MR. PRIDE: Well, you are casting doubt on my belief.

THE COURT: Bring him out.

MR. PRIDE: I'm curious myself. If I wrote down J-o-r-d-o-n with the first witness then I need to take—how do you spell your name?

MR. JORDAN: J-o-r-d-a-n.

MR. PRIDE: G-o-r-d-a-n?

MR. TUIITE: D-A-N.

[fol. 124] THE COURT: You asked for it.

THE WITNESS: J-o-r-d-a-n.

MR. PRIDE: G-o-r-d-a-n? G or J?

MR. TUIITE: J-o-r-d-a-n.

MR. PRIDE: He is under the influence of narcotics now.

MR. TUIITE: We ask that that be stricken.

THE COURT: The last remark will be stricken.

MR. PRIDE: He sounded like D-O-N. If you knew what I know about him you wouldn't have him in here as a witness, he is under the influence of narcotics now.

MR. MARTWICK: Judge, I object to counsel's opinion as to his present state of health.

MR. PRIDE: All right, hold me in contempt.

THE COURT: All right, strike it.

MR. PRIDE: I represented him before, I know him.

MR. TUIITE: You are asking the Court to hold you in contempt?

MR. PRIDE: No. I know Mr. Martwick would be in favor of it.

Well, you are not taking all of this down?

Well, I lost that point. Let me make my correction.

MR. TUIITE: Have the narcotics been introduced?

[fol. 125] MR. MARTWICK: Have they been accepted? They have been offered.

THE COURT: They may be received in evidence.

MR. PRIDE: There is a general objection on behalf of all exhibits.

(Thereupon said items and documents, having been so offered and received in evidence, were marked People's Exhibits 1 through 6, in evidence, and are made a part of the record by reference and as follows:)

[fol. 126] MR. TUIITE: The State will rest it's case in chief.

MR. PRIDE: At this time the defense moves for a finding of not guilty.

THE COURT: Denied.

MR. PRIDE: And we will ask for a recess until tomorrow morning.

THE COURT: 9:00 o'clock?

MR. TUIITE: Can you get the defendant up here at 9:00 o'clock?

MR. MARTWICK: He probably won't be up here until 9:30.

MR. TUIITE: What time will you have him up here?

THE BAILIFF: Ten after 9:00.

THE COURT: All right, 9:15.

(Thereupon the above-entitled cause was adjourned until the following day, Tuesday, September 22, 1964, at 9:15 a.m.)

[fol. 127]

TRANSCRIPT OF PROCEEDINGS

* * * *

Before Judge HERBERT R. FRIEDLUND, September 22, 1964, at 9:15 o'clock a.m.

Court convened pursuant to adjournment.

PRESENT: MR. ROBERT MARTWICK and MR. PATRICK TUIITE, Assistant State's Attorneys, on behalf of the People;
MR. WALTER LAVON PRIDE, on behalf of the defendant.

THE CLERK: The People of the State of Illinois vs. Fleming Smith.

FLEMING SMITH,

defendant herein, called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Pride:

Q Will you state your name, sir, and speak up so his Honor, Judge Friedlund, and the court reporter can hear you.

A Fleming Smith.

[fol. 128] Q How do you spell that?

A F-l-e-m-i-n-g S-m-i-t-h.

Q Mr. Smith, you are presently an inmate of the County Jail, is that correct?

A Yes, sir.

Q Now, what was your address prior to February 28, 1964?

A 4455 South Calumet.

Q Now, are you married or single?

A Married.

Q Would that be 4448 South Calumet?

A 44—well, I moved to 4455.

Q You have lived at both addresses, is that correct?

A Yes.

Q Now, Mr. Smith, directing your attention to on or about the 28th day of February, 1964, at or about the hour of 10:30 a.m., did you have occasion to be in a restaurant at or about 317 East 43rd Street?

A Yes, sir.

Q You have to speak a little louder, please.

A Yes, sir.

Q Now, are you acquainted or rather were you acquainted with a man named James Jordan on that date?

[fol. 129] A Yes, sir.

Q And how long had you known him on February 28, 1964?

A I'd say a few years or so, casually.

Q Now, did you know him to be a narcotic addict?

A Yes, sir.

Q And on that date did you use narcotics?

A Yes, sir.

Q Now, on that date and at that time and place did you have a conversation with James Jordan?

A Yes, sir.

Q And did this conversation take place inside the restaurant at 317 East 43rd Street?

A Yes, sir.

Q What did you say to him and what did he say to you?

A Well, he asked me if I knew where he could get some narcotics.

Q What did you say to him?

A I told him no, that I had some, a bag, a \$5 bag, but it was for my personal use.

Q What if anything did he say to you then?

A He asked me if I knew someone where he could get some for him.

Q Did you respond to that?

[fol. 130] A Well, I told him there was a fellow in the place, a fellow named Herbie, that could get some for him.

Q Now, do you know the full name or the legal name of this fellow you refer to as Herbie?

A Herbert Simpson.

Q Do you know whether or not James Jordan knew Herbert Simpson on that date?

A Oh, yes, yes.

Q Now, what if anything happened after you told him this?

A Well, he asked me who was it and I turned my back and nodded to the fellow by the washroom.

Q And what if anything did James Jordan do after you turned your back and nodded toward the washroom?

A Immediately he went to the back of the place.

Q Now, were you—strike that.

Did he come out of the washroom at any time?

A Well, yes, after I was sitting on the stool he came back.

Q About how long after he went into the washroom did you see him come out?

A About five minutes.

[fol. 131] Q Now, what if anything happened when he came out, did you have any conversation with him then?

A Well, he put his hand up and told me everything was mellow.

Q Everything was mellow?

A Yes.

Q What does that mean?

A Means everything was all right, that he got some narcotics.

Q Did you see James Jordan when he left the restaurant?

A Well, yes, sir.

Q Did you remain in the restaurant after he left?

A Yes, sir.

Q And did you have occasion to see Officer House who testified in this courtroom yesterday in the restaurant?

A Yes, sir.

Q Can you recall how long after it was that James Jordan left the restaurant that Officer House came into the restaurant?

A It was about five minutes afterwards.

Q Now, when Officer House came into the restaurant what if anything were you doing?

[fol. 132] A I was drinking a cup of coffee.

Q Now, had you had occasion to transact any business with any employee of that restaurant prior to the time that Officer House came in?

A Yes, sir.

Q What was the nature of that transaction?

A Well, I bought a cup of coffee.

Q And did you pay for that cup of coffee?

A Yes, sir.

Q Do you recall the denominations of the money, whatever it was, that you used to pay for that cup of coffee?

A Well, it was a five dollar bill.

Q A five dollar bill. By the way, how much did the cup of coffee cost?

A Ten cents.

Q Did you receive change from that five dollar bill?

A Yes, sir.

Q How much change did you receive?

A Four dollars and 90 cents.

Q Now, what if anything happened after Officer House came into the restaurant?

A Well, he told me that I was under arrest.

[fol. 133] Q And did he tell you why you were under arrest?

A Well, he said I had made a sale.

Q Did he give any other information to you concerning the alleged sale?

A No, sir.

Q What if anything happened after that?

A Well, they put handcuffs on me.

Q Who do you mean when you say they?

A The officers, Officer House and Officer Strom—no, Officer House.

Q Officer House put handcuffs on you?

A Officer Strom wasn't there, he was sitting in the car.

Q Did Officer Strom ever come into the restaurant after Officer House had placed you under arrest?

A No, sir, not as I can recollect.

Q What if anything happened after Officer House placed the handcuffs on you?

A Then took me to the squad car.

Q Where was that squad car at that time?

A Across the street.

Q From the restaurant?

A No, not directly, diagonally.

Q But it was near the elevated platform of 43rd [fol. 134] Street?

A Yes, sir.

Q And was there anyone else in that squad car besides Officer Strom?

A No, sir.

Q Were you searched at any time prior to going to the police station?

A Yes, sir, I was searched.

Q Where were you searched?

A In the restaurant.

Q And did Officer House say anything to you at the time of or after the search?

A No, sir.

Q Did he make any remark about the money?

A No, sir.

Q How much money did he take from you, if any?

A He took, that I can remember, he took five dollars, I think it was.

Q Was that five ones or a five dollar bill?

A Five ones.

Q Five ones?

A Yes, sir.

Q Now, did he give any of that money back to you?

A No, sir.

[fol. 135] Q He didn't give you anything, he kept the five ones?

A Yes, sir.

Q Now, did he make any remark about any quarters?

A No, sir.

Q The five single dollar bills consisted of all the money he took from you?

A Yes, sir.

Q Now, when you got into the squad car—when you were taken to the squad car did Officer Strom say anything to you?

A No, sir.

Q Did you see James Jordan anywhere around?

A No, sir.

Q Were you searched for narcotics?

A Yes, sir.

Q Where did this search take place?

A In the police station.

Q And one five dollar bag was found on your person, is that correct?

A Yes, sir.

Q Now, did you ever see James Jordan during this day, that is, February 28th after you were arrested?

A No, sir.

Q Do you know where Herbert Simpson is now, Mr. Smith?

[fol. 136] A I don't know exactly.

Q Do you know whether or not he was arrested for selling narcotics that day?

A Oh, yes, sir, yes, sir.

MR. PRIDE: That is all, you may inquire.

MR. MARTWICK: Just a couple of questions, Mr. Smith.

CROSS EXAMINATION

By Mr. Martwick:

Q Now, how long did you talk to James Jordan in the restaurant when you saw him?

A It wasn't long, just a couple of seconds.

Q A couple of seconds?

A Yes.

Q And right after you finished talking to him he walked into the back, into the washroom?

A Yes, sir.

Q And he stayed there for about five minutes?

A About five minutes.

Q And he didn't give you any money at the time, did he?

A No, sir.

Q Did he offer to give you any money?

A He tried, but—

Q He tried?

A He tried.

[fol. 137] Q What did he try to give you?

A He tried to give me some money he had in his hand but I wouldn't accept it, I told him I wasn't peddling narcotics.

Q Did he ask you for a half of a sixteenth?

A No, sir.

Q What did he ask you for?

MR. PRIDE: Objection, he has already testified as to what the conversation was.

MR. MARTWICK: Judge, this is cross examination.

THE COURT: He may answer.

A He just asked me if I knew where he could get some—

THE COURT: I can't hear you.

A I say, he just asked me where he could get some stuff.

MR. MARTWICK: Q So you told him he could go in back and buy it, is that right?

A Yes, sir, to this fellow Herbert Simpson.

Q How much money did you have in your pocket on that night?

A Oh, I had about \$35 that I had in my wallet for food and rent, plus I had a \$5 bill in my front pocket and I had some change.

Q And you had some change. And you bought one cup [fol. 138] of coffee, is that right?

A Yes, sir.

Q And for that ten cent cup of coffee you gave the man in the restaurant a \$5 bill, is that right?

A I gave the lady.

Q The lady. You gave her a \$5 bill?

A Yes.

Q Even though you still had change in your pocket—

MR. PRIDE: Objection, he has not testified to that.

MR. MARTWICK: Object, he has testified to that.

THE COURT: Objection sustained.

MR. MARTWICK: Q You say Officer House came in five minutes after James Jordan left, is that right?

A Yes, sir.

Q Did you see him walk into the restaurant or was it five minutes after he left that he came up and he arrested you?

A Well, my back was turned when he came in, I didn't see him when he came in until he came around the side.

Q You didn't see him until he arrested you?

A Until he came to the side, because there was somebody else sitting between us.

[fol. 139] Q What did he say when he came and arrested you?

A He showed me his badge and told me I was under arrest.

Q And this was about five minutes after James Jordan left, is that right?

A Yes.

Q So you don't know when he came in the restaurant?

A Well, I said I saw him at the side when he came in.

Q You saw him along side of you?

A On the side of me.

Q But you said you had your back to the door and you didn't see—

A It was five minutes after James Jordan left when he arrested me.

Q So as far as you know he came in the restaurant five minutes after—

MR. PRIDE: Object, the State's Attorney is trying to get a yes or no answer to a particular wording which would—which is prejudicial. The defendant answered and said he saw him come in the restaurant on—

MR. MARTWICK: Object, he said he didn't see him walk into the restaurant because he had his back to the door.

[fol. 140] That is what the testimony is.

THE COURT: It is a little conflicting, however, to clarify it you may proceed.

MR. MARTWICK: Q You were not facing the door while you were sitting in that restaurant, is that right, Mr. Smith?

A No, sir.

Q You didn't see everybody who walked into that restaurant, did you?

MR. PRIDE: Objection, that is immaterial as to whether or not he saw everybody.

MR. MARTWICK: Judge, I believe this is cross examination.

THE COURT: Be more specific about it, everybody that came into the restaurant could be for a long period of time.

MR. MARTWICK: Q How many people did you see walk into that restaurant for the five minute period after James Jordan left until the time you were arrested?

A There were a couple of people.

THE COURT: I can't hear you.

A There were a couple of people I could see, I was sitting in the restaurant and the door was directly behind me. Therefore, if I looked out of the side of my eye I could see.

[fol. 141] THE COURT: The way you turned you indicated it was over your shoulder?

A No, I was sitting like that and if I—

THE COURT: If you looked sideways over your shoulder you could see?

A Like this.

THE COURT: Let the record show he indicates looking slightly over his right shoulder.

MR. MARTWICK: Q And you say that Officer Strom did not come into the restaurant?

A Not as I can remember.

Q You didn't see him in the restaurant?

A No, sir.

Q You had narcotics on you that day, is that right?

A Yes, sir.

MR. PRIDE: He has testified to that.

A For my personal use.

THE COURT: He has said he had.

MR. MARTWICK: That is all.

MR. PRIDE: You may step down, Mr. Simpson.

If the Court please, at this time the defense offers into evidence Defendant's Exhibits Nos. 1 and 2, for identification.

[fol. 142] THE COURT: And these are—

MR. PRIDE: Those purport to be the official reports of the two arresting officers, the purpose is to show that one has been altered to show the amount of money recovered from the defendant was \$4, this was the first statement shown to me, the other shows 4.75 was recovered from the defendant. The physical evidence shows this \$4 only was recovered from him.

THE COURT: All right, they may be admitted in evidence.

(Said documents, having been so offered and received in evidence, were marked Defendant's Exhibit's Nos. 1 and 2, in evidence, and are in words and figures as follows; to-wit:)

[fol. 143] MR. PRIDE: The defense rests, your Honor.

* * * *

[fol. 170]

[Reporter's Certificate to foregoing transcript omitted in printing]

[fol. 171]

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—CRIMINAL DIVISION

* * * * *

Gen. No. 64-2447

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

FLEMING SMITH

MINUTE ENTRIES OF SEPTEMBER 22, 1966

This day come the said People by DANIEL P. WARD, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And the Court hearing Testimony of Witnesses.

And Counsel for said Defendant now here rests.

And the State's Attorney, Counsel for the People and Counsel for said Defendant now here rest.

VERDICT

And the Court hearing closing arguments of Counsel and being fully advised in the premises doth FIND the said Defendant FLEMING SMITH, Guilty of unlawful sale of narcotic drug in manner and form as charged in the indictment.

MOTION FOR NEW TRIAL AND DENIAL THEREOF

Counsel for said Defendant now here moves the Court for a New Trial in this cause.

And the Court hearing Counsel for said Defendant in support of said Motion for a New Trial, as well as the State's Attorney, Counsel for the People in opposition thereto and being fully advised in the premises doth DENY said Motion and orders that said Motion be and the same is hereby DENIED accordingly.

[fol. 172]

MOTION IN ARREST OF JUDGMENT AND DENIAL THEREOF

Counsel for said Defendant now here moves the Court in Arrest of Judgment in this cause.

And the Court hearing Counsel for said Defendant in support of said Motion in Arrest of Judgment, as well as the State's Attorney, Counsel for the People in opposition thereto and being fully advised in the premises doth DENY said Motion and orders that said Motion be and the same is hereby DENIED accordingly.

And now neither the said Defendant nor his Counsel for him saying anything further why the judgment of the Court should not now be pronounced against him on the said finding of guilty heretofore entered and the judgment rendered to the indictment in this cause.

JUDGMENT AND SENTENCE

THEREFORE, it is considered, ordered, and adjudged by the Court that the said Defendant FLEMING SMITH, is guilty of the said crime of unlawful sale of narcotic drug in manner and form as charged in the indictment in this cause, on the said finding of guilty.

Testimony heard in Mitigation and Aggravation.

THEREFORE, it is ordered and adjudged by the Court that the said Defendant FLEMING SMITH, be and he hereby is sentenced to the Illinois State Penitentiary for the crime of unlawful sale of narcotic drug in manner and form as charged in the indictment whereof he stands convicted, for a term of years not less than TEN (10) years, nor more than ELEVEN (11) years, for the crime whereof he stands convicted, and it is further ordered and adjudged that the said Defendant FLEMING SMITH, be taken from the bar of the Court to the Common Jail of Cook County, and from thence by the Sheriff of Cook County to the Illinois State Penitentiary, and be delivered to the Department of Public Safety and the said Department of Public Safety is hereby required and commanded to take the body of the said Defendant FLEMING

SMITH, and confine him in said Penitentiary, according [fol. 173] to law, provided such term of imprisonment in said Penitentiary shall not be less than TEN (10) years, nor more than ELEVEN (11) years, for the crime for which the said Defendant was convicted and sentenced.

IT IS FURTHER ORDERED that the said Defendant pay all the cost of these proceedings, and that execution issue therefor.

It is further ordered by the Court that the sentence imposed in this cause General Number 64-2447, run concurrently with the sentence imposed in cause General Number 64-2361.

Counsel for said Defendant now here moves the Court for an Appeal in this cause.

* * * *

[fol. 174]

[Clerk's Certificate to foregoing
transcript omitted in printing]

[fol. 175]

IN THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT, FIRST DIVISION

No. 50159

PEOPLE OF THE STATE OF ILLINOIS, APPELLEE

vs.

FLEMING SMITH, APPELLANT

OPINION—May 9, 1966

Mr. Justice Burman Delivered The Opinion Of The Court.

The defendant was convicted in a bench trial of the unlawful sale of narcotic drugs, and was sentenced to a term in the Illinois State Penitentiary of not less than ten years nor more than eleven years. In this appeal, he does not challenge the sufficiency of the evidence to support his conviction, but contends: 1) that the State was obliged to reveal the true name of an informer who testified at the trial; 2) that defendant was entrapped into committing the offense; and 3) that the indictment failed to meet statutory standards because it failed to specify the place of the offense.

The sale of narcotics for which the defendant was convicted was made on February 28, 1964, to a narcotics addict and paid police informer who, at the trial, identified himself by the admittedly false name of James Jordan. On that day Jordan went to a district police station in Chicago where he met police officers Strom and House. The three men proceeded to a location on 43rd Street near the "L" tracks where Jordan pointed out the defendant. They then returned to the police station, where Jordan was thoroughly searched and then given six one-dollar bills and four quarters in marked currency and coin. Upon their return to the place where Jordan had pointed out the defendant, Jordan entered a restaurant near the "L" tracks; Officer House, a few feet from the restaurant,

watched through the window, while Officer Strom watched from across the street. House testified that he saw Jordan [fol. 176] and the defendant conversing, but that the defendant turned his back and House could not see more. Jordan testified that when he was in the restaurant he told the defendant he would like to buy "half a sixteenth" from him, but defendant told him he only had a \$5 bag, which he agreed to sell for \$4.75. Jordan gave him four one-dollar bills and three quarters, whereupon the defendant opened the fly of his pants and gave the defendant the tin foil package which later was found to contain heroin. Jordan then left the restaurant, gave a pre-arranged signal indicating that he had made the purchase, and turned over to Officer Strom the package and \$2.25. Officer House, meanwhile, entered the restaurant, sat at the counter near the defendant, and ordered a cup of coffee. Officer Strom field-tested the powder in the package, and then he and Officer House arrested the defendant. A search of his person produced, among other things, another bag of narcotics, which was recovered from the fly of his pants, and four of the recorded one-dollar bills. None of the marked quarters was recovered.

The defendant testified that he had known James Jordan casually for a few years, that he had known Jordan was an addict, and that he had been an addict himself. He further testified that on the day in question Jordan asked him if he knew where Jordan might get some narcotics; and that he answered that he only had one \$5 bag, which was for his own use, but that Jordan might get some from another man whom defendant pointed out in the restaurant. Defendant claimed that Jordan then contacted the other man, and indicated upon his return that, "Everything was mellow," which meant that he had succeeded in making a purchase. Defendant contended that he might have received the four marked bills in change when he paid for a cup of coffee with a five dollar bill.

[fol. 177] The informer Jordan, on cross examination, testified over the State's objection that Jordan was not his correct name; but when defense counsel then asked for his correct name, the State's objection on behalf of the

informer's safety was sustained. Defendant now contends that this failure to disclose the informer's true name is grounds for dismissal, where the informer was an active participant in the crime, citing *Roviaro v. United States*, 353 U.S. 53. But we conclude that *Roviaro* differs materially on the facts from this case, and therefore does not apply. In that case, the Court found that the government, by refusing to disclose the identity of an informer who took an active part in the crime but who did not appear as a witness at the trial, prevented the defendant from gaining access to one whose testimony could possibly have been vital to the defense. It was not alleged in that case that the defendant had means of identifying the informer other than the requested disclosure of his true name. The United States Supreme Court, in discussing the so-called "informers' privilege," observed,

The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation. (353 U.S. at 59).

The Court went on to state, (353 U.S. at 62):

We believe that no fixed rule with respect to disclosure is justifiable. The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend upon the [fol. 178] particular circumstances of each case, taking into consideration the crime charged, the possible significance of the informer's testimony, and other relevant factors.

The Court concluded that since the government's refusal to disclose the informer's identity in that case rendered his potentially vital testimony inaccessible to the defendant, the nondisclosure constituted reversible error.

But in the case at bar, the informer appeared as a witness, and was therefore subject to cross examination by the defendant. This fundamental difference distinguishes the two cases. But furthermore, there are indications in the record that the defendant did not need disclosure of the informer's true name to determine his identity. Defendant testified that he had known the informer " * * a few years or so, casually," prior to the day of the sale. Defendant's counsel asked the informer whether he was known "in the streets" by a specified nickname, but upon the State's objection he was not permitted to answer. Later in the trial, in another context, defendant's counsel volunteered the comment, in reference to the informer, "I represented him before, I know him."

Even assuming *arguendo* that defendant could not otherwise discover the informer's identity, we discern no disadvantage whatever which could have resulted to him on that account. Defendant contends that if he had been supplied the informer's true name, he could have determined whether the informer had given inconsistent testimony in the trial of another man who was convicted for selling narcotics in that restaurant on that day. But there is no indication that, even if there were such a case and even if the informer did testify therein, the informer used his correct name in that case any more than in the [fol. 179] case at bar. We conclude that the defendant was not prejudiced by the failure of the State to disclose to him the true name of an informer who had been produced as a witness, and whose identity was either known to the defendant or otherwise ascertainable by him.

Defendant next contends that he was unlawfully entrapped by a paid police informer into the commission of the offense, and therefore is entitled to his dismissal. This defense was not urged in the trial court, and therefore cannot be raised for the first time on appeal. *People v. Redding*, 28 Ill. 2d 305, 308, 192 N.E. 2d 341; *People v. Outten*, 13 Ill. 2d 21, 24-5, 147 N.E. 2d 284. Defendant urges that while the defense of entrapment was not specifically pleaded or relied upon in the trial court, it was clearly suggested, and that this is sufficient under *People v. Strong*, 21 Ill. 2d 320, 172 N.E. 2d 765. But here, there

was no mention of entrapment at the trial; in fact, defendant's line of defense was a denial that he had sold the narcotics to the informer at all. Such a position is diametrically opposed to a defense of entrapment, and we feel negates the contention that entrapment was "clearly suggested" in the trial court. *People v. Outten*, 13 Ill. 2d 21, 147 N.E. 2d 284. Furthermore, even if that defense could be raised at this point by the defendant, the facts of this case do not disclose the inducement on the part of the police which is required to sustain an entrapment defense. *People v. Gray*, 27 Ill. 2d 527, 190 N.E. 2d 638, *cert. denied*, 375 U.S. 864. In support of his claim that he was unlawfully entrapped, defendant cites *People v. Strong*, 21 Ill. 2d 320, 172 N.E. 2d 765. But in *Strong*, the narcotics which the defendant had been convicted of selling had been supplied to him for that purpose by the State. The case is clearly distinguishable on those grounds.

[fol. 180] Finally, defendant contends that the indictment, in failing to name the place of the offense as could be done, failed to satisfy the requirements of sub-section 111-3(a)(4) of the Code of Criminal Procedure (Ill. Rev. Stats., ch. 38, § 111-3(a)(4), 1963). He also cites *People v. Williams*, 30 Ill. 2d 125, 196 N.E. 2d 483 in support of this contention. The indictment alleged that the offense was committed on February 28, 1964, at and within Cook County, and therefore satisfied that statutory requirement as interpreted in the later cases of *People v. Blanchett*, 33 Ill. 2d 527, 212 N.E. 2d 97, and *People v. Reed*, 33 Ill. 2d 535, 213 N.E. 2d 278, decided by our Supreme Court subsequent to the filing of the original briefs in this case. The indictment was therefore valid.

For the foregoing reasons, the conviction must be affirmed.

Judgment Affirmed.

KLUCZYNSKI, P.J., and MURPHY, J., concur.

Mandate will issue only on request of attorney.
See Sec. 88 C.P.A. and App. Ct. Rule 10.

[fol. 181]

IN THE SUPREME COURT OF ILLINOIS

* * *

PRESENT: RAY I. KLINGBIEL, CHIEF JUSTICE
 JUSTICE WALTER V. SCHAEFER
 JUSTICE BYRON O. HOUSE
 JUSTICE ROBERT C. UNDERWOOD
 JUSTICE HARRY B. HERSHEY
 JUSTICE ROY J. SOLFISBURG, JR.

WILLIAM G. CLARK, ATTORNEY GENERAL

ROBERT G. MILEY, MARSHAL

ATTEST: MRS. EARLE BENJAMIN SEARCY, CLERK

* * *

Petition for Leave to Appeal from Appellate Court

First District 64-2447 50159

: No. 40065

(PEOPLE STATE OF ILLINOIS, RESPONDENT

vs.

FLEMING SMITH, PETITIONER

ORDER DENYING PETITION FOR LEAVE TO APPEAL—
 September 22, 1966

And now on this day the Court having duly considered the Petition for Leave to Appeal herein as well as the record and abstract, filed in support thereof, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

I, MRS. EARLE BENJAMIN SEARCY, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the

foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said court this 27th day of September, 1966.

(SEAL)

/s/ Mrs. Earle Benjamin Searcy
Clerk,
Supreme Court of the State of Illinois.

[fol. 182]

SUPREME COURT OF THE UNITED STATES

No. 956 Misc., October Term, 1966

FLEMING SMITH, PETITIONER

v.

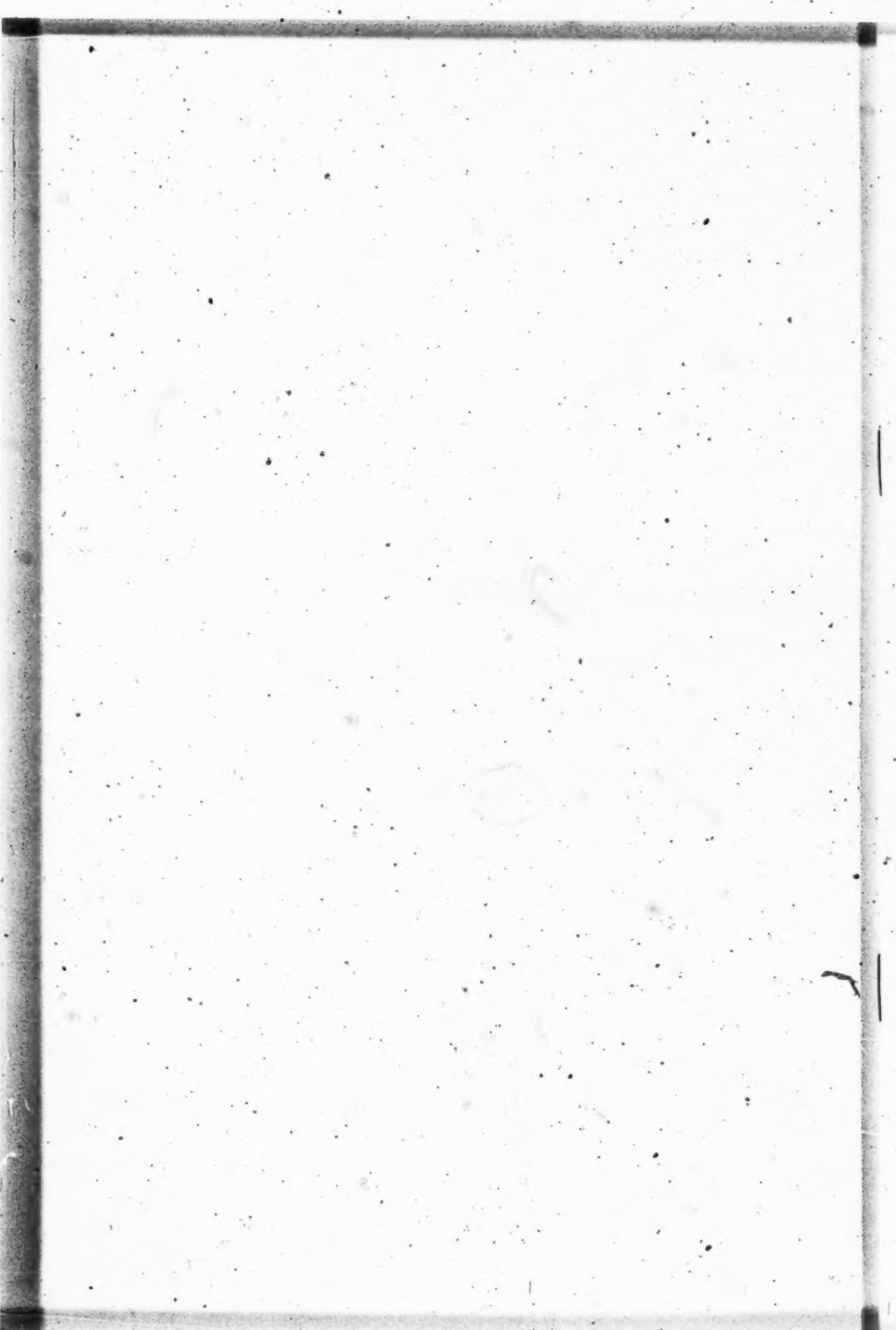
ILLINOIS

ON PETITION FOR WRIT OF CERTIORARI TO the Appellate Court of the State of Illinois, First District.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS AND GRANTING PETITION FOR
WRIT OF CERTIORARI—May 15, 1967

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1388 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



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JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 158

FLEMING SMITH,

Petitioner,

—VS.—

ILLINOIS.

**ON WRIT OF CERTIORARI TO THE APPELLATE COURT
OF ILLINOIS, FIRST DISTRICT**

PETITIONER'S BRIEF

GERALD W. GETTY,

Public Defender of Cook County, Ill.

JAMES J. DOHERTY,

Assistant Public Defender

MARSHALL J. HARTMAN,

Assistant Public Defender

**Rm. 910, County Building
Chicago, Illinois 60602**

Counsel for Petitioner

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 158

FLEMING SMITH,

Petitioner,

—vs.—

ILLINOIS.

ON WRIT OF CERTIORARI TO THE APPELLATE COURT
OF ILLINOIS, FIRST DISTRICT

PETITIONER'S BRIEF

(a) Opinions Below

The opinion of the Appellate Court of Illinois, reported at 70 Ill. App. 2d 289, 217 N.E. 2d 546, is printed at pages 92 to 96 of the Transcript of Record.

(a) Opinion Below

The opinion and judgment of the Appellate Court of Illinois, affirming the judgment of the Circuit Court of Cook County, Illinois, Criminal Division, were entered on May 9, 1966 (R 92-96). Petition for Leave to Appeal, seasonably filed in the Supreme Court of Illinois on June 30, 1966, was denied, without opinion, on September 22, 1966 (R 97). Petition for writ of certiorari, filed November 7,

1966, was granted on May 15, 1967 (R 99). The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3).

(c) Constitutional Provisions Involved

The Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . .

The Fourteenth Amendment:

. . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . .

(d) Questions Presented for Review

1. Is the Supreme Court ruling in *Roviaro v. United States* that the informer must be disclosed where he is a participant in a sale of narcotics, satisfied by a State procedure which allows the informer to be brought into open court and then refuse to disclose his name?

2. Is the Sixth Amendment right to confrontation of witnesses satisfied by a State procedure which allows a witness to take the stand, accuse the defendant, and then decline to disclose his identity?

(e) Statement of the Case

The State's chief prosecution witness testified that his name was "James Jordan" (R 6). On cross examination, the witness admitted that "James Jordan" was not his

correct name (R 16). When defense counsel asked for the witness's correct name, the prosecutor objected on the ground that the witness did not have to reveal his name for his own safety. The objection was sustained (R 16).

"James Jordan" testified that Fleming Smith sold him narcotics in return for pre-recorded money (R 9). Fleming Smith denied the sale and testified that James Jordan purchased the narcotics from a third party in the restaurant (R 80-81); that he received the pre-recorded money from the cashier in change when he paid for a cup of coffee with a five dollar bill (R 82).

No other prosecution witness observed the alleged transaction (R 52, 60-61).

(f) Summary of Argument

Where a police informant is in fact a material witness on the issue of guilt, the informer's privilege is not available to the State. In the instant case, the informant was a material witness on the issue of guilt. Therefore, the informer's privilege could not be invoked in this case.

Assuming *arguendo* that the State had a valid informer's privilege to invoke, it could not be invoked once the prosecutor had produced the witness in open court to testify against the petitioner. In the instant case, the prosecutor invoked the informer's privilege during trial in order to withhold the chief prosecution witness's correct name. When the prosecutor's objection was sustained, petitioner was thereby effectively denied his Sixth Amendment right to cross examine.

(g) Argument

1. Where the Police Informer Is in Fact a Material Witness on the Issue of Guilt, the "Informer's Privilege" Is Not Available to the State.

There is a vital distinction between a mere informer on the preliminary issue of probable cause and a material witness on the issue of guilt.

A mere informer has a limited role; he simply points the finger of suspicion toward a person who has violated the law. He puts the wheels in motion which cause the defendant to be suspected and perhaps arrested, but he plays no part in the criminal act with which the defendant is later charged. His identity is ordinarily not necessary to the defendant's case, and the privilege against disclosure properly applies.

When it appears from the evidence, however, that the informer is also a material witness on the issue of guilt, his identity is relevant and may be helpful to the defendant. In such a case, nondisclosure would deprive the defendant of a fair trial. See *People v. McShann*, 50 Cal. 2d 802, 330 P. 2d 33, 36, citing *Roviaro v. United States*, 353 U.S. 53.

This vital distinction between a mere informer and a material witness was pointed out by Professor Wigmore. Regarding the "informer's privilege" he wrote:

"That the government has this privilege is well established, and its soundness cannot be questioned."

(Footnotes omitted.) 8 Wigmore, Evidence §2374 (McNaughton rev. 1961).

However, Wigmore also pointed out that the privilege is subject to certain limitations inherent in its logic and in its policy. One limitation, which is precisely applicable under the facts of record at bar, is as follows:

“ * * * disclosure will be compelled if the informer is a material witness on the issue of guilt.” (Footnote omitted.) 8 Wigmore, Evidence §2374 (4) (McNaughton rev. 1961).

On March 20, 1967, this Court upheld the informer's privilege in a preliminary hearing to determine probable cause for an arrest and search. *McCray v. Illinois*, 386 U.S. 300. In *McCray*, the police informer was a “mere informer” on the preliminary issue of probable cause; not a material witness on the issue of guilt. Since he was not present at the commission of the offense charged, he could contribute literally nothing on the issue of guilt. Under such circumstances, this Court held that the privilege against disclosure properly applied.

However, in the case at bar the informant was a material witness on the issue of guilt. He testified that Fleming Smith sold him narcotics in return for pre-recorded money (R 9). Fleming Smith denied the sale and testified that the informant “James Jordan” purchased the narcotics from a third party in the restaurant (R 80-81); that he received the pre-recorded money from the cashier in change when he paid for a cup of coffee with a five dollar bill (R 82). No other prosecution witness observed the alleged transaction (R 52, 60-61). Under those circumstances, we submit that the police informant “James Jordan” was in fact a material witness on the issue of guilt.

Therefore, the "informer's privilege" was simply not available to the State in the instant case.

2. Where the Police Informant Is Called as a Witness to Testify Against the Accused, the Informer's Privilege Cannot Be Asserted to Defeat the Accused's Right to Confront the Witness and Cross Examine Him.

Assuming *arguendo* that the State had a valid informer's privilege to invoke, surely it could not be invoked once the prosecutor had produced the witness in open court to testify against the petitioner.

The Sixth Amendment provides in part:

"In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . ."

In commenting upon this constitutional guaranty, Professor Wigmore wrote:

"The main and essential purpose of confrontation is to secure for the opponent the opportunity of cross examination. The opponent demands confrontation, not for the idle purpose of gazing upon the witness, or of being gazed upon by him, but for the purpose of cross examination, . . ." 5 Wigmore, Evidence §1395 (1) (1940).

Pointer v. Texas, 380 U.S. 400, held that the Sixth Amendment right of confrontation is binding upon the States through the Due Process Clause of the Fourteenth; that the right of cross examination must be determined

by the same standards whether the right is denied in a federal or state proceeding.

In *Alford v. United States*, 282 U.S. 637, a witness was asked his correct address. The Government's objection was sustained. Your Honors reversed, holding that a witness's correct address was basic to the right of cross examination. Without it, the defendant would be denied the right to seek and offer testimony of the witness's reputation for veracity in his own neighborhood.

In the light of *Pointer v. Texas*, the *Alford* case makes the case at bar *a fortiori*.

In the case at bar, the State's chief prosecution witness testified that his name was "James Jordan" (R 6). On cross examination, the witness admitted that "James Jordan" was not his correct name (R 16). When defense counsel asked for the witness's correct name, the prosecutor objected, and his objection was sustained (R 16).

Certainly, there could be no effective cross examination thereafter. A witness's correct name is absolutely essential to meaningful cross examination. Without a witness's correct name, several basic avenues of attack on the witness's credibility are unavailable.

Has the witness been in a mental institution? Does he have a criminal record? Are there charges pending against him? How many? Any investigation into those matters would of necessity begin with the witness's correct name. Without the witness's correct name, all avenues of investigation are sealed off.

It is no answer at all to suggest that counsel could have inquired into those matters of the witness himself. The

point is that counsel could not verify or disprove any answers received; he would have to take the witness's word for it. Counsel would then be in the preposterous position of having to believe a witness whose credibility he is attacking. That would not be cross examination; it would be double direct examination.

In short, we urge that where a witness's correct name is withheld, not only is cross examination restricted, it is effectively denied.

Thus, in the case at bar, the accused was effectively denied his Sixth Amendment right to confront and cross examine his accuser because the State was allowed to interpose the informer's privilege.

(h) Conclusion

In *McCray v. Illinois*, this Court quoted with approval the Supreme Court of New Jersey, as follows:

"We must remember that we are not dealing with the trial of the criminal charge itself. There the need for a truthful verdict outweighs society's need for the informer privilege." (386 U.S., at p. 307.)

In the case at bar, we are dealing with the trial of the criminal charge itself.

Petitioner prays that the judgments of the courts below be reversed and that this cause be remanded for a new

trial in which his Sixth Amendment right of confrontation will be honored.

Respectfully submitted,

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RECEIVED A COPY of the above and foregoing Petitioner's Brief this 21st day of August, 1967.

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IN THE

Supreme Court of the United States

OCTOBER TERM A. D. 1967

NO. 158

FLEMING SMITH,

Petitioner,

vs.

ILLINOIS,

Respondent.

(On Writ of *Certiorari* to the Appellate Court of Illinois,
First District.)

BRIEF FOR RESPONDENT.

QUESTION PRESENTED

Whether the Constitution requires that the true identity and present address of a governmental informant be disclosed on cross examination?

STATEMENT OF FACTS

The facts are set out in the opinion below and to the extent that petitioner's Statement is contested the appropriate facts will be asserted in the pertinent sections of the Argument.

SUMMARY OF ARGUMENT

The name and address of the informant herein were not necessary or essential to the defense of the accused and hence were not constitutionally required to be disclosed to the accused.

ARGUMENT

I.

THE STATE HAS THE PRIVILEGE OF NON-DISCLOSURE OF THE IDENTITY OF AN INFORMANT WHERE THE IDENTITY IS NOT ESSENTIAL TO THE DEFENSE OF AN ACCUSED.

Governmental prerogatives include the privilege to protect the identity of persons who have furnished information of violations of law to officers charged with the enforcement of law. The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of every citizen to inform law enforcement officials of the commission of crimes and by preserving their identity, encourages them to perform this obligation to society. *McCray v. Illinois*, 386 U.S. 300; *Roviaro v. United States*, 353 U.S. 53; *Scher v. United States*, 305 U.S. 251; *In re Quarles and Butler*, 158 U.S. 532; *Vogel v. Gruaz*, 110 U.S. 311.

In order that the various federal, state and local law-enforcement agencies may properly preserve the rights and privileges of its citizens, they are required to rely upon information supplied to them by informers. (Harney and Cross, *The Informer in Law Enforcement*, (1960) pp. 6-12). It is difficult to characterize the benefit of society occasioned by this flow of information in a mere numerical or percentile quotation. But we believe that this Court is cognizant that this aspect of crime detection provides a significant portion of arrests and convictions

of serious crimes throughout our country. *McCray v. Illinois*, 386 U.S. 300; *Lewis v. United States*, 385 U.S. 206. Not only is the use of the informer helpful but perhaps it can be characterized as an integral instrument to maintain the peace and dignity of a community and secure the citizenry in the exercise of their constitutionally guaranteed rights.

Specifically, if we reduce the question in issue to a single informant, it is apparent that if his identity is revealed to the criminal element, the law-enforcement agencies have lost the use of a valuable asset. The individual informant will henceforth be foreclosed from gathering information which would be necessary or helpful to the police. (Harney and Cross, *The Informer In Law Enforcement*, (1960) p. 63).

The major danger to which this informant would be exposed, if his identity were revealed, is the retaliation which would befall him by the criminal elements who despise and fear him. (Harney and Cross, *The Informer In Law Enforcement*, (1960) p. 4). The decisions of our courts are replete with recognition of the fact that an informer literally risks his life by volunteering information to law-enforcement authorities.¹

¹ *United States v. Howard*, 228 F. Supp. 939. (U.S. D.C., Nebr. 1964); *United States v. Saunders*, 325 F. 2d 840 (C.A. 6th, 1964); *Ferina v. United States*, 302 F. 2d 95, (C.A. 8th, 1962) cert. denied sub. nom.; *Cardarella v. United States*, 371 U.S. 819; *United States v. Paroutian*, 319 F. 2d 66, (C.A. 2nd, 1964), cert. denied, 375 U.S. 981 (No. 540 Misc.); *United States v. Bando*, 244 F. 2d 833, (C.A. 2nd, 1957), cert. denied, 355 U.S. 884; *Carbo v. United States*, 288 F. 2d 686 (C.A. 9th, 1961) cert. denied, 365 U.S. 861; *Carbo v. United States*, 82 S. Ct. 662,

Mr. Justice Clark, in *Rovario v. United States*, 153 U.S. 53, took cognizance of this situation and observed (p. 67):

"Once an informant is known the drug traffickers are quick to retaliate. Dead men tell no tales. The old penalty of tongue removed, once visited upon the informer Larunda, has been found obsolete."

In *Schuster v. City of New York*, 5 N.Y. 2d 75, 154 N.E. 2d 534 (C.A. N.Y. 1958), the Court after taking cognizance of the death of an informant, discussed the possibility that not only does a governmental agency have a moral obligation to protect an informant but may have a duty under law to do so.

It logically follows and is well accepted that informers will be unwilling to expose themselves to the aforementioned dangers, by furnishing information, if disclosure of their identity is required. A rule of law which would require disclosure of an informer's identity where not required for the petitioner's defense, would mean the immediate loss of practically all existing and potential informants to the direct detriment of society.

The People of the State of Illinois submit that the informant is an absolute necessity for an effective control of crimes involving narcotics. In the narcotic field, as in any crime where we are confronted with a willing victim, there are usually no complaining witnesses and the only adequate manner in which the police can apprehend and convict violators is through the use of information supplied by confidential informants. The traffickers in narcotics are universally unwilling to deal with a stranger, and the difficulties of the law enforcement

7 L. Ed. 2d 769, review denied, 369 U.S. 868); *Odom v. United States*, 116 F. 2d 996, (C.A. 5th, 1941), reversed 313 U.S. 554.

agent to gain the confidence of an individual engaged in this enterprise can only be characterized as nearly impossible. (Harney and Cross, *The Informer In Law Enforcement* (1960) pp. 18-19).

Mr. Justice Clark further observed in *Rovario v. United States*, 353 U.S. 53 (p. 66):

"First, it is well to remember that the illegal traffic in narcotic drugs poses a most serious social problem. One need only read the newspaper to gauge its enormity. No crime leads more directly to the commission of other offenses. Moreover, it is a most difficult crime to detect and prove. Because drugs come in small pills or powder and are readily packaged in capsules or glassine containers, they may be easily concealed. They can be carried on the person or even in the body crevices where detection is almost impossible. Enforcement is, therefore, most difficult without the use of 'stool pigeons' or informants."

The governmental privilege is therefore of great importance and should be, respondent submits, given cognizance wherever possible. This Court has said:

"We believe that no fixed rule with respect to disclosure is justifiable. The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors. (*Rovario v. United States*, 353 U.S. 53, 62.)

The People of the State of Illinois submit that the specific question presented in this cause, whether the right of the petitioner to defend himself has been un-

duly restricted by the failure to disclose the true identity and address of the informant, on cross-examination must be determined by applying the theory of "Balancing of Rights" in light of the facts and circumstances attendant to this case.

II.

THE RULING OF THE TRIAL JUDGE SUSTAINING AN OBJECTION TO THE DISCLOSURE OF THE NAME AND ADDRESS OF THE INFORMANT WAS PROPER FOR IT DID NOT DEPRIVE THE PETITIONER OF A FULL AND FAIR OPPORTUNITY TO DEFEND HIMSELF.

James Jordan, a paid police informer, participated in a controlled sale of narcotics with the petitioner on February 28, 1964 (Tr. pp. 44-51). At the trial the prosecution produced Jordan as a witness and he testified to the circumstances surrounding the sale (Tr. pp. 6-12). On cross examination he admitted prior convictions (Tr. pp. 13-14); that he was an addict (Tr. pp. 13-14); that he had pending charges against him (Tr. p. 42); and that he had received funds as a police informer (Tr. p. 25).

The only objections to questions on cross examination which were sustained pertained to Jordan's correct name and present address (Tr. pp. 15-16).

The petitioner contends that the failure to divulge James Jordan's true name and present address is a violation of the petitioner's constitutional rights under the Fourteenth and Sixth Amendments to the Constitution of the United States. This contention is predicated upon the assumption that the right of confrontation and cross-examination is absolute and unfettered. This contention respondent submits completely ignores the governmental privilege of non-disclosure.

It is submitted that justice would best be served in this cause or in any cause where a police informant is involved if the principle of balancing is applied. To determine in a particular case what action is reasonable and thus whether due process has been complied with, the need of the government to act as it did should be balanced against the harm resulting to the individual from the action taken.

The question presented here has not been resolved by this Court. The balancing theory has, however, been applied for example by lower courts to the conflict between the right of cross examination and the privilege against self-incrimination. In *United States v. Cardillo*, 316 F. 2d 606, (C.A. 2d Cir. 1963) the court said:

"Since the right to cross-examine is guaranteed by the Constitution, a federal conviction will be reversed if the cross-examination of government witnesses has been unreasonably limited. E. g., *Alford v. United States*, *supra*; *United States v. Masino*, 2 Cir. 1960, 275 F. 2d 129; *United States v. Lester*, 2 Cir. 1957, 248 F. 2d 239. However, reversal need not result from every limitation of permissible cross-examination and a witness' testimony may, in some cases, be used against a defendant, even though the witness invokes his privilege against self-incrimination during cross-examination. In determining whether the testimony of a witness who invokes the privilege against self-incrimination during cross-examination may be used against the defendant, a distinction must be drawn between cases in which the assertion of the privilege merely precludes inquiry into collateral matters which bear only on the credibility of the witness and those cases in which the assertion of the privilege prevents inquiry into matters about which the witness testified on direct examination. Where the privilege has been invoked as to purely

collateral matters, there is little danger of prejudice to the defendant and, therefore, the witness's testimony may be used against him. *United States v. Krawitz*, 3 Cir. 1960, 281 F. 2d 581; *Hamer v. United States*, 9 Cir. 1958, 259 F. 2d 274; *United States v. Toner*, 3 Cir. 1949, 173 F. 2d 140. On the other hand, if the witness by invoking the privilege precludes inquiry into the details of his direct testimony, there may be a substantial danger of prejudice because the defense is deprived of the right to test the truth of his direct testimony and, therefore, that witness's testimony should be stricken in whole or in part, *Montgomery v. United States*, 5 Cir. 1953, 203 F. 2d 887; cf. *United States v. Andolschek*, 2 Cir. 1944, 142 F. 2d 503; *Stephan v. United States*, 6 Cir. 1943, 133 F. 2d 87; *United States v. Keown*, W.D. Ky. 1937, 19 F. Supp. 639."

Thus where the privilege of self-incrimination was invoked by a witness on cross examination there is little danger of prejudice to the defendant where the privilege is being invoked only as to matters of credibility. See also *Coil v. United States*, 343 F. 2d 573 (C.A. 8th 1965); *United States v. McFarland*, 371 F. 2d 701 (C.A. 2d 1966).

The reasoning of *Cardillo* can be applied to the case at bar. The restrictions placed upon the cross examination herein dealt only with the question of credibility and thus the trial court was properly within its discretion in permitting the State to invoke the governmental privilege.

The thrust of petitioner's argument is that he could not effectively attack the credibility of the informer without the true name and present address of the informer.

It is important to note, however, that on cross-examination the informer admitted that he was presently an addict (Tr. pp. 13-14); that he had prior convictions for

larceny and burglary (Tr. pp. 13-14); that he presently had a criminal charge pending against him (Tr. p. 42); and, that he had been paid (Tr. p. 25). By his own admission, therefore, his credibility was called into question. Moreover, his entire testimony, including the facts and circumstances of the commission of the crime, was corroborated by the police officers (Tr. pp. 44-73), whose testimony was in no way impeached.

Also of significance, the attorney for petitioner stated in open court that he knew the informer and had on a prior occasion represented him. Thus it can be properly assumed that if there were additional facts which may have reflected adversely upon James Jordan's credibility, such facts were readily available to the defense.

The disclosure of the informer's true name and present address would be of little, if any, benefit to the petitioner, while on the other hand the benefit to society is obvious.

Petitioner cites *Roviaro v. United States*, 353 U.S. 53 to support his allegation that the State can not attempt to invoke its governmental privilege of non-disclosure, even in a limited application, where it has produced the informer at the trial. In *Roviaro* this Court in its supervisory power held that the identity of an informer is required to be divulged or produced where he is the sole participant other than the accused and the charge is not mere possession.

The State of Illinois has we submit, fully complied with the requirements of *Roviaro*. The informer, Jordan, was produced at the trial, he testified, and was subjected to cross examination. *Roviaro* does not require, we further submit, that the right of cross examination and confrontation be absolute and unfettered.

Petitioner further relies upon *Pointer v. Texas*, 380 U.S. 400 to support the contention that the cross examination must be unfettered. *Pointer*, however, stands for the

proposition that the Sixth Amendment rights are incorporated into the Fourteenth Amendment to the Constitution of the United States and therefore applicable to the States. *Pointer* does not discuss the scope of cross examination presented here which is required under the Sixth Amendment.

The petitioner also cites *Alford v. United States*, 282 U.S. 687, as authority for the proposition that the defense is entitled to the real name and present address of a witness. *Alford* is not applicable to this case for the objection therein to the question seeking this information was predicated upon whether it was relevant and not upon a right or privilege.

In the case at bar it is important to law enforcement authorities of the State of Illinois that all actual and potential informers know and understand that the authorities are attempting to protect them.

. As applied to James Jordan, if his name and present address were divulged, retaliation may have followed not only for his testimony in this case but in the cases in which he had previously testified and other pending cases in which he admitted he had participated. The reasoning set forth in the *Cardillo* case permitting the balancing of the rights of the accused and that of the witness for the State where only the credibility of the witness could be affected is, we submit, sound. Taken with the facts in this case, it is apparent that the principle of balancing should and must be applied in favor of the governmental privilege of non-disclosure.

CONCLUSION

For the reasons stated herein, it is respectfully submitted that the judgment of conviction should be affirmed.

Respectfully submitted,

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SUPREME COURT, U. S.

FILED

OCT 24 1967

JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 158

FLEMING SMITH,

Petitioner,

v.

ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI OF THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PETITIONER'S REPLY BRIEF

The respondent argues that the "informer's privilege" is necessary to law enforcement; that there should be a "Balancing of Rights" theory adopted in determining this case. (Br. 3-7)

We have no quarrel with such a procedure. But let us not forget what is being balanced: the "informer's privilege" against the need for a truthful verdict. *McCray v. Illinois*, 386 U.S., at p. 307.

Similar policy arguments seeking to expand the "informant's privilege" to material witnesses on the issue of guilt in narcotics cases were emphatically rejected by the Pennsylvania Supreme Court on September 26, 1967. *Commonwealth v. Carter*, — Pa. —, 2 CrL 3001.

Respondent says that they have fully complied with the requirements of *Roviaro v. United States*, 353 U.S. 53, by producing the informant in open court to let the petitioner gaze at him. (Br. 10). Our main reply to such an argument is that if the State fully complies with the requirements of *Roviaro*, there simply is no privilege to invoke. Secondly we reply, there is a distinction between producing a witness and disclosing the witness's identity. 8 Wigmore, Evidence #2374 (4); Cf. *Brookhart v. Janis*, 384 U.S. 1.

Respondent argues that in any event the defense counsel made the statement that he knew the informant and had represented him on a previous occasion. (Br. 10) We reply that it cannot be assumed from such statement that defense counsel knew the witness's correct name. Moreover, there is no finding of fact by the trial judge that defense counsel knew the witness's correct name. (*Roviaro v. United States*, 353 U.S. 53, footnote 8.)

Respondent stresses the obvious when he argues that *Pointer v. Texas*, 380 U.S. 400, did not discuss the scope of cross-examination. (Br. 11) Of course it didn't, but it supplied the basic postulate which permitted us to look to *Alford v. United States*, 282 U.S. 637, as authority for the proposition that cross-examination was denied in the case at bar.

Respondent answers that *Alford* has no application at bar because the objection to the question seeking the wit-

ness's correct address was on the ground of relevancy. (Br. 11) But, we reply, *Alford* held that "the question 'Where do you live?' was not only an appropriate preliminary to the cross-examination of the witness, but on its face . . . was an essential step in identifying the witness with his environment, to which cross-examination may always be directed." That is why we argued that *Alford* makes the case at bar *a fortiori*. Without a witness's correct name, not only is inquiry into the witness's reputation foreclosed, but so are other, more basic, avenues of inquiry and attack on his credibility, including any history of mental illness, the full extent of his criminal record, and the number of charges pending against him.

Alford held that there is no obligation on a trial judge "to protect a witness from being discredited on cross-examination, short of an attempted invasion of his constitutional protection from self-incrimination, properly invoked."

That statement must have derailed the respondent. Respondent's approach to the case at bar is predicated upon the faulty major premise that the self-incrimination clause of the Fifth Amendment should control the decision, citing *United States v. Cardillo*, 316 F. 2d 606. (Br. 8-11)

We reply that the protections of the Fifth Amendment were not invoked in the instant case; it does not involve one constitutional right opposed to another; it simply involves a state testimonial privilege improperly invoked in derogation of petitioner's constitutional right of confrontation. Moreover, not even the Fifth Amendment per-

mits a witness to withhold his correct name. *United States v. Compton*, 365 F. 2d 1.

Conclusion

Petitioner reiterates his prayer for reversal.

Respectfully submitted,

GERALD W. GETTY

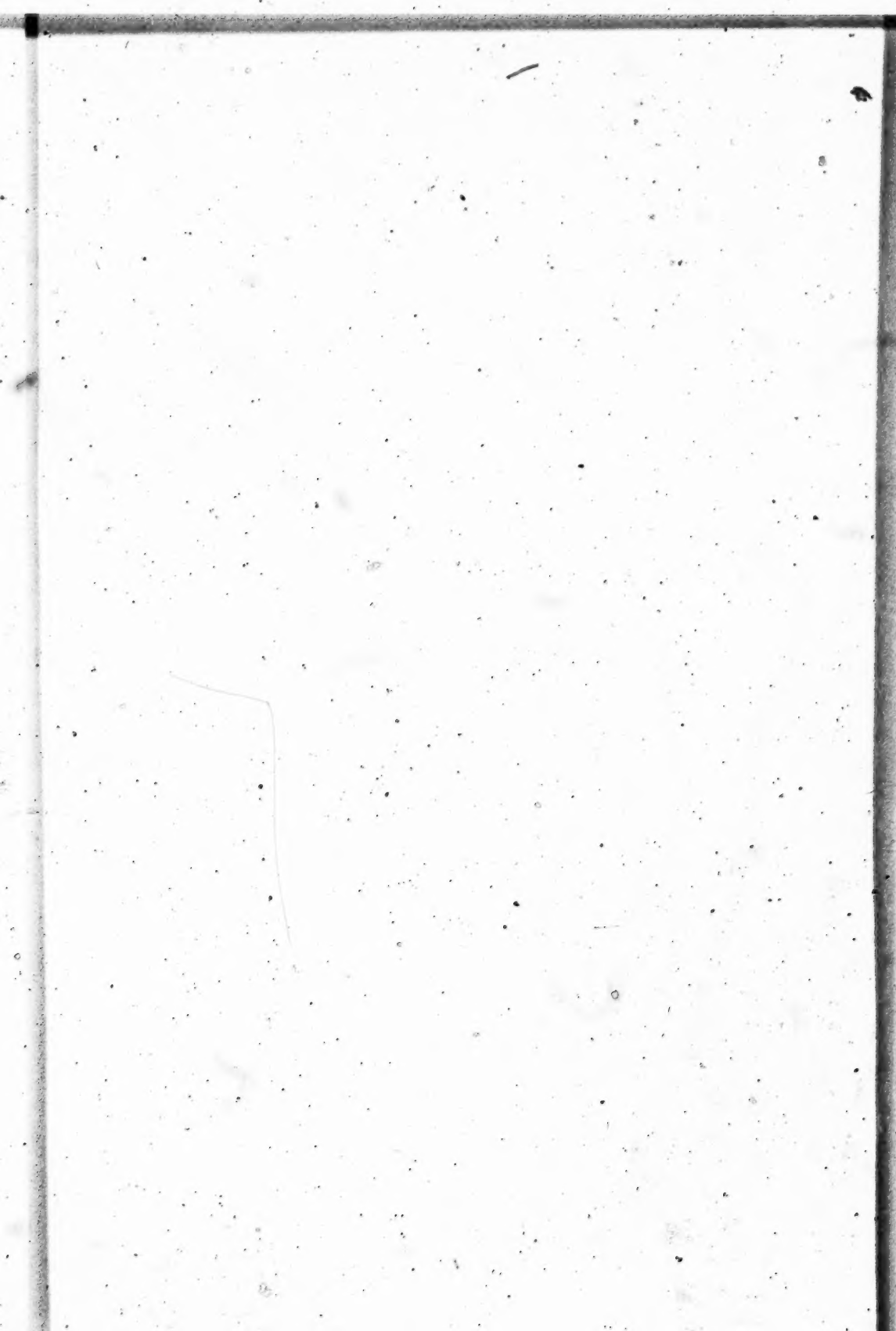
Public Defender of Cook County

JAMES J. DOHERTY

Assistant Public Defender

MARSHALL J. HARTMAN

Assistant Public Defender



SUPREME COURT OF THE UNITED STATES

No. 158.—OCTOBER TERM, 1967.

Fleming Smith, Petitioner, } On Writ of Certiorari to the
v. } Appellate Court of Illi-
State of Illinois. } nois, First District.

[January 29, 1968.]

Opinion of the Court by MR. JUSTICE STEWART, announced by MR. JUSTICE FORTAS.

In *Pointer v. Texas*, 380 U. S. 400, 403, this Court held that the Sixth Amendment right of an accused to confront the witnesses against him is a "fundamental right . . . made obligatory on the States by the Fourteenth Amendment." The question presented in this case is whether Illinois denied that right to the petitioner, Fleming Smith. He was convicted in a criminal court of Cook County, Illinois, upon a charge of illegal sale of narcotics, and his conviction was affirmed on appeal.¹ We granted certiorari to consider his constitutional claim.²

At the trial the principal witness against the petitioner was a man who identified himself on direct examination as "James Jordan." This witness testified that he had purchased a bag of heroin from the petitioner in a restaurant with marked money provided by two Chicago police officers. The officers corroborated part of this testimony,³ but only this witness and the petitioner testified to the

¹ 70 Ill. App. 2d 289, 217 N. E. 2d 546.

² 387 U. S. 904.

³ The officers testified that the witness had entered the restaurant with the marked money and without narcotics, and that he had emerged with a bag of heroin. They also testified that they had found some of the marked money in the petitioner's possession when they arrested him.

crucial events inside the restaurant, and the petitioner's version of those events was entirely different.⁴ The only real question at the trial, therefore, was the relative credibility of the petitioner and this prosecution witness.

On cross-examination this witness was asked whether "James Jordan" was his real name. He admitted, over the prosecutor's objection, that it was not. He was then asked what his correct name was, and the court sustained the prosecutor's objection to the question.⁵ Later the witness was asked where he lived, and again the court sustained the prosecutor's objection to the question.⁶

As the Court said in *Pointer*, "It cannot seriously be doubted at this late date that the right of cross-examination is included in the right of an accused in a criminal case to confront the witnesses against him." 380

⁴ The petitioner testified that he had refused to sell the witness narcotics but had directed him to another man in the restaurant from whom he believed a purchase had been made. The petitioner also testified that he used a \$5 bill to purchase a cup of coffee, and must have received the marked money in his change.

⁵ "MR. PRIDE: Is James Jordan your correct name?"

"MR. MARTWICK: Object.

"MR. PRIDE: I have a right to know if it is his correct name.

"THE COURT: He may answer if it is his correct name or not.

"MR. PRIDE: Is that your correct name?"

"A. No, it is not.

"Q. What is your correct name?"

"MR. MARTWICK: Object.

"THE COURT: I won't have him answer that."

⁶ "Q. Now, where do you live now?"

"MR. MARTWICK: Objection.

"MR. PRIDE: This is material.

"MR. MARTWICK: Objection, Judge.

"THE COURT: Yes, objection allowed."

The record shows that in fact the petitioner and his lawyers knew "Jordan" and that the lawyer had once represented him. However, there is no evidence in the record that either the petitioner or his lawyer knew "Jordan's" correct name or where he was living at the time of this trial.

U. S., at 404. Even more recently we have repeated that "[A] denial of cross-examination without waiver . . . would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it." *Brookhart v. Janis*, 384 U. S. 1, 3.

In the present case there was not, to be sure, a complete denial of all right of cross-examination. But the petitioner was denied the right to ask the principal prosecution witness either his name or where he lived, although the witness admitted that the name he had first given was false. Yet when the credibility of a witness is in issue, the very starting point in "exposing falsehood and bringing out the truth" through cross-examination must necessarily be to ask the witness who he is and where he lives. The witness' name and address open countless avenues of in-court examination and out-of-court investigation. To forbid this most rudimentary inquiry at the threshold is effectively to emasculate the right of cross-examination itself.

In *Alford v. United States*, 282 U. S. 687, this Court almost 40 years ago unanimously reversed a federal conviction because the trial judge had sustained objections to questions by the defense seeking to elicit the "place of residence" of a prosecution witness over the insistence of defense counsel that "the jury was entitled to know 'who the witness is, where he lives and what his business is.'" 282 U. S., at 688-689. What the Court said in reversing that conviction is fully applicable here:

"It is the essence of a fair trial that reasonable latitude be given the cross-examiner, even though he is unable to state to the court what facts a reasonable cross-examination might develop. Prejudice ensues from a denial of the opportunity to place the witness in his proper setting and put the weight of his testi-

¹ See *Pointer v. Texas*, 380 U. S., at 404.

mony and his credibility to a test, without which the jury cannot fairly appraise them. . . . To say that prejudice can be established only by showing that the cross-examination, if pursued, would necessarily have brought out facts tending to discredit the testimony in chief, is to deny a substantial right and withdraw one of the safeguards essential to a fair trial. . . .

"The question 'Where do you live?' was not only an appropriate preliminary to the cross-examination of the witness, but on its face, without any such declaration of purpose as was made by counsel here, was an essential step in identifying the witness with his environment, to which cross-examination may always be directed. . . .

"The extent of cross-examination with respect to an appropriate subject of inquiry is within the sound discretion of the trial court. It may exercise a reasonable judgment in determining when the subject is exhausted. . . . But no obligation is imposed on the court, such as that suggested below, to protect a witness from being discredited on cross-examination, short of an attempted invasion of his constitutional protection from self incrimination, properly invoked. There is a duty to protect him from questions which go beyond the bounds of proper cross-examination merely to harass, annoy or humiliate him. . . . But no such case is presented here" 282 U. S., at 692-694.

In *Pointer v. Texas*, *supra*, the Court made clear that "the right of an accused to be confronted with the witnesses against him must be determined by the same standards whether the right is denied in a federal or

state proceeding" 380 U. S., at 407-408. In this state case we follow the standard of *Alford* and hold that the petitioner was deprived of a right guaranteed to him under the Sixth and Fourteenth Amendments of the Constitution.⁸

Reversed.

⁸ It is to be noted that no claim of the privilege against compulsory self-incrimination was asserted by "James Jordan." Cf. *United States v. Cardillo*, 316 F. 2d 606. Nor are this Court's decisions in *McCray v. Illinois*, 386 U. S. 300, and *Roviaro v. United States*, 353 U. S. 53, relevant here. In neither of those cases was the informer a witness for the prosecution. Another recent Illinois decision seems to have recognized that the state evidentiary informer privilege is not involved when the informer is himself a witness at the trial. *People v. Smith*, 69 Ill. App. 2d 83, 89, — N. E. 2d —. See 8 Wigmore, Evidence § 2374, n. 6 (McNaughton rev. 1961).

SUPREME COURT OF THE UNITED STATES

No. 158.—OCTOBER TERM, 1967.

Fleming Smith, Petitioner,	}	On Writ of Certiorari to the Appellate Court of Illi- nois, First District.
v.		
State of Illinois.		

[January 29, 1968.]

MR. JUSTICE WHITE, with whom MR. JUSTICE MARSHALL joins, concurring.

In *Alford v. United States*, 282 U. S. 687, 694 (1931), the Court recognized that questions which tend merely to harass, annoy, or humiliate a witness may go beyond the bounds of proper cross-examination. I would place in the same category those inquiries which tend to endanger the personal safety of the witness. But in these situations, if the question asked is one that is normally permissible, the State or the witness should at the very least come forward with some showing of why the witness must be excused from answering the question. The trial judge can then ascertain the interest of the defendant in the answer and exercise an informed discretion in making his ruling. Here the State gave no reasons justifying the refusal to answer a quite usual and proper question. For this reason I join the Court's judgment and its opinion which, as I understand it, is not inconsistent with these views. I should note in addition that although petitioner and his attorney may have known the witness in the past, it is not at all clear that either of them had ever known the witness' real name or that they knew where he lived at the time of the trial.

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[January 29, 1968.]

MR. JUSTICE HARLAN, dissenting.

We granted certiorari in this case believing that it presented with requisite clarity the issue whether a defendant in a state criminal trial may constitutionally be denied on cross-examination of a principal state witness the right to question such witness as to his actual name and address. Were I still of the view, after examination of the record, that this case clearly presents that question, I would concur in the Court's judgment on due process, but not on Sixth Amendment "incorporation," grounds.* The record, however, raises serious doubt that this petitioner was denied any information that he did not already have, thus either rendering the error harmless or at least making the issue inappropriate for constitutional adjudication.

The State's witness identified himself as "James Jordan." Apparently knowing that this was not his real or his only name, defense counsel asked Jordan whether that was his correct name, and received a negative reply. Further inquiry was disallowed by the trial judge as to both the witness' name and address. Later, however, defense counsel said of the witness "I represented him before, I know him." Still later, when asked by defense counsel on direct examination how long he had known James Jordan, the defendant replied, "I'd say a few

*See my concurring opinion in *Pointer v. Texas*, 380 U. S. 400, 408.

years or so, casually." The defendant also indicated that he knew Jordan to be a narcotics addict, and that he knew that Jordan was acquainted with a person whose legal name he knew to be Herbert Simpson.

In the face of these developments, the Court's suggestion that perhaps the defense nevertheless did not know Jordan's name or address is, to say the least, exceedingly dubious. At no point did defense counsel, or defendant, state that he lacked the requested information, nor did counsel pursue the point with any vigor after the State's objections to the questions; he simply turned to another series of questions without suggesting any way in which his attempt to present a defense had been prejudiced. The inference seems to me patent that counsel was asking routine questions, to which he already knew the answers, and that his failure to get answers in court was of no consequence.

I would not reverse a state conviction on a record so opaque, indeed one savoring of a disingenuous constitutional contention. Cf. *Rescue Army v. Municipal Court*, 331 U. S. 549; *Poe v. Ullman*, 367 U. S. 497. I would therefore dismiss the writ as improvidently granted.

